This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

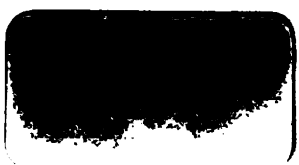
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`



AP
ASH
APt

Scotland Trials of Treason and Felonies

TRIALS

FOR

HIGH TREASON,

IN

SCOTLAND,

UNDER A SPECIAL COMMISSION,

HELD AT

STIRLING, GLASGOW, DUMBARTON,

PAISLEY, AND AYR,

IN THE YEAR 1820.

IN THREE VOLUMES.

TAKEN IN SHORT-HAND BY

C. J. GREEN.

VOL. II.

EDINBURGH:

PRINTED BY JAMES BALLANTYNE AND CO.

PUBLISHED BY MANNERS AND MILLER,

92, PRINCE'S STREET.

M.DCCC.XXV.

LIBRARY OF THE
UNIVERSITY

a. 55564

JUL 10 1901

TRIALS

FOR

HIGH TREASON,

AT

STIRLING, GLASGOW, PAISLEY, DUMBARTON,

AND AYR.

June, July, and August, 1820.

GLASGOW

26th July, 1820.

SEDERUNT.

The Right Honourable CHARLES HOPE, President.
Right Honourable DAVID BOYLE, Justice-Clerk.
Right Honourable Sir SAMUEL SHEPPARD, Chief Baron.
Right Honourable WILLIAM ADAM, Chief Commissioner.
Honourable Lord HERMAND,
Honourable Lord GILLIES, two Commissioners of Justiciary.

R

GRAND JURY.

1. HUGH BOGLE, Esq. Foreman.
2. JOHN LANG, Esq.
3. HUMPHREY EWING M'LAE, Esq.
4. NORMAN LOCKHART, Esq.
5. JAMES FYFE, Esq.
6. PETER M'ADAM, Esq.
7. GEORGE MILLER, Esq.
8. JAMES STEWART, Esq.
9. GEORGE MORE NISBET, Esq.
10. DAVID SIM, Esq.
11. NATHANIEL STEVENSON, Esq.
12. WILLLIAM POLLOCK, the younger, Esq.
13. ARCHIBALD KEIR, Esq.
14. JAMES COUTTS CRAWFORD, Esq.
15. THOMAS FALCONER, Esq.
16. JAMES BRUCE, Esq.
17. ALEXANDER CAMPBELL, the younger, Esq.
18. ARCHIBALD LETHAM CUTHILL, Esq.
19. JOHN GOURLAY, Esq.
20. ARCHIBALD LAMONT, Esq.
21. DAVID M'HAFFIE, Esq.
22. JOHN ROWAT, Esq.
23. JAMES HUTTON, Esq.

The Grand Jury being sworn, the Officers of Court appointed, and the same forms observed as in Stirling, the Lord President delivered his charge to the Grand Jury.

The witnesses whose names were indorsed on the back of the respective Bills of Indictment, were then sworn in Court, to give evidence before the Grand Jury.

The Grand Jury returned into Court with a true bill against

Strathaven case. { James Wilson, William M'Intyre, William Robinson, William Watson, } *for High Treason.*

The two first indicted,—the two last not in custody.

At the request of the prisoners, Messrs Francis Jeffrey and James Miller were assigned as their counsel, and John Fleming, writer in Glasgow, as their agent; and the prisoners were served with copies of the indictment, of a list of witnesses, and a list of the Jury who were to be on their trial.

Tuesday, 27th June, 1820.

SEDERUNT.

LORD PRESIDENT.
LORD JUSTICE CLERK.
LORD CHIEF BARON
LORD CHIEF COMMISSIONER ADAM.

The Grand Jury returned true bills against

Strathaven case. { John Walters, John Stevenson, William Howat, Peter Macallum, Robert Hamilton, John Morrison, } *for High Treason.*

The first indicted,—the other five not in custody.

Also against

Anderston case. { William Campbell, George Allan, Alexander Cameron, Walter Provan, Peter Ferguson, Matthew Logan, } *for High Treason.*

The two first indicted,—the other four not in custody

Also against

Parkhead case.	John May, Alexander Graham, Matthew Bogle, Andrew Kirkland, William M'Cracken, John M'Alister, David Sharp,	*for High Treason.*

The three first indicted,—the other four not in custody.

The prisoners indicted, served with copies of their indictments, and with lists of witnesses and Jury.

The Grand Jury directed to attend again on Saturday, the 8th of July.

Messrs Jeffrey, and J. P. Grant, assigned as counsel for May, Bogle, Campbell, and Allan; Messrs Jeffrey and Cockburn, for Graham. Messrs Robert Graham and Andrew Mitchell, writers, Glasgow, solicitors for the prisoners.

Saturday, 8th July, 1820.

PRESENT.

LORD PRESIDENT.
LORD JUSTICE CLERK.
LORD CHIEF BARON.

GRAND JURY.

James Wilson and William M'Intyre, prisoners, were placed at the bar, when Mr John Archibald Murray, and Mr Alexander Earl Monteith, were assigned as their counsel.

Objected for the prisoners:—

1st, That one of the Grand Jury had served without being summoned.

2d, That another, John Letham Cuthill, one of the

Grand Jury who had served, was misnamed, the correct name being John Litham Cuthill.

The first withdrawn,—the second repelled.

The Clerk then arraigned James Wilson and William M'Intyre, by reading their indictment.

The prisoners pleaded *Not Guilty*.

ABSTRACT OF INDICTMENT.

Counts.	Overt Acts.	
I.		FIRST COUNT.—Compassing and Imagining the Death of the King.
	1.	Conspiring to devise Plans to subvert the Constitution.
	2.	Conspiring to levy War, and to subvert the Constitution.
	3.	For publishing and posting up a Treasonable Address to the Inhabitants of Great Britain and Ireland, to incite the Soldiers of the King and other subjects to Rebellion.
	4.	For publishing and posting up Printed Addresses to the Inhabitants of Great Britain and Ireland, stating the substance only of such Addresses, with similar intent as in third Overt Act.
	5.	For composing, and printing, and posting up divers Addresses, containing solicitations to the Troops and Subjects of the King to levy War.
	6.	For assembling together, and, whilst so assembled, making speeches to incite the Subjects to Rebellion.
	7.	For purchasing and providing Arms, in order to attack the Soldiers of the King, and to make War against the King.
	8.	For assembling and parading with Arms, and attacking the Houses of divers Subjects, and taking therefrom Arms and Ammunition, with similar intent as in the last Overt Act.
	9.	For manufacturing Arms, with similar intent.

Counts.	Overt Acts.	
	10.	For training and drilling themselves and others, with similar intent.
	11.	For levying War.
	12.	For endeavouring to seduce the Troops of the King from their allegiance.
	13.	For detaining and imprisoning divers Subjects, with intent, by duresse, to compel them to join in levying War.
	14.	For forcing divers Subjects to discharge and turn off their Workmen.
	15.	For striking Work, and compelling and persuading others to do the same.
	16.	For sending Persons to England, to incite the liege Subjects of the King there to acts of Treason.
	17.	For subscribing Money for the purpose of procuring Arms.
	18.	For exhorting and persuading certain of the liege Subjects of the King to procure Arms, to be employed in Rebellion.
	19.	For giving notice of Meetings to be held for the purpose of consulting as to the means of raising War.
II.		SECOND COUNT.—Levying War.
III.		THIRD COUNT.—Compassing and Intending to Depose the King from the style, honour, and kingly name of the Imperial Crown of this Realm. With the same Overt Acts as in First Count.
IV.		FOURTH COUNT.—Compassing to levy War against the King, in order to compel him to change his measures. With the same Overt Acts as in First Count.

Indictment for High Treason.

First count.—Lanarkshire—To wit.—The Jurors for our Lord the King, upon their oath, present, that James Wilson, late of the parish of Avendale, in the county of Lanark, hosier; William M'Intyre, late of the same parish of Avendale, in the same county of Lanark, weaver; William Robinson, late of the same parish of Avendale, in the same county of Lanark, weaver; and William Watson, late of the same parish of Avendale, in the same county of Lanark, weaver; being subjects of our said Lord the King, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, and wholly withdrawing the love, obedience, fidelity, and allegiance, which every true and faithful subject of our said Lord the King should, and of right ought to bear towards our said Lord the King, on the 1st day of April, in the first year of the reign of our Sovereign Lord, George the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale, in the county of Lanark, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously, amongst themselves, and together with divers other false traitors, whose names are to the said Jurors unknown, did compass and imagine the death of our said Lord the King, and to move and incite insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the legislature, rule, and government, now duly and happily established within this realm, and to bring and put our said Lord the King to death; and, in order to fulfil, perfect, and bring to effect

1st Overt Act.

their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the said 1st day of April, in the first year of the reign aforesaid, and on divers other days and times as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did assemble, meet, conspire, and consult among themselves, and together with divers other false traitors, whose names are to the said jurors unknown, to devise, arrange, and mature plans and means to subvert and destroy the government and constitution of this realm, as by law established: And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the said 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did assemble, meet, conspire, consult, and agree amongst themselves, and together with divers other false traitors, whose names are to the said jurors unknown, to stir up, raise, make, and levy insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established: And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, such false traitors as aforesaid, on the 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as

2d Overt Act.

3d Overt Act.

after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did publish, and cause and procure to be published, divers printed papers, purporting to be addresses to the inhabitants of Great Britain and Ireland, and containing therein, in manner and to the effect following; that is to say, "Address to the Inhabitants of Great Britain and Ireland. Friends and countrymen,—Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which, (if not misrepresented by designing men, would have united all ranks,) have reduced us to take up arms for the redress of our common grievances. The numerous public meetings held throughout the country, has demonstrated to you that the interests of all classes are the same. That the protection of the life and property of the rich man is the interest of the poor man, and, in return, it is the interest of the rich to protect the poor from the iron grasp of despotism; for, when its victims are exhausted in the lower circles, there is no assurance but that its ravages will be continued in the upper, for, once set in motion, it will continue to move till a succession of victims fall. Our principles are few, and founded on the basis of our constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt. Equality of rights (not of property) is the object for which we contend, and which we consider as the only security for our liberties and lives. Let us shew to the world that we are not that lawless sanguinary rabble which our oppressors would persuade the higher circles we are, but a brave and generous people, determined to be free. Liberty or death is our motto, and we have sworn to return home in triumph, or return no more. Soldiers! shall you, countrymen bound by the sacred obligation of an oath to defend your country and your King from enemies, whe-

ther foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers, and at once sacrifice, at the shrine of military despotism, to the unrelenting orders of a cruel faction, those feelings which you hold in common with the rest of mankind? Soldiers! turn your eyes toward Spain, and there behold the happy effects resulting from the union of soldiers and citizens. Look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and the soldiery, happily accomplished without bloodshed; and shall you, who taught those soldiers to fight the battles of liberty, refuse to fight those of your own country? Forbid it, heaven! Come forward, then, at once, and free your country and your king from the power of those that have held them too, too long in thraldom. Friends and countrymen, the eventful period has now arrived where the services of all will be required for the forwarding of an object so universally wished, and so absolutely necessary. Come forward, then, and assist those who have begun in the completion of so arduous a task, and support the laudable efforts which we are about to make, to replace to Britons those rights consecrated to them by Magna Charta and the Bill of Rights, and sweep from our shores that corruption which has degraded us below the dignity of man. Owing to the misrepresentations which have gone abroad with regard to our intentions, we think it indispensibly necessary to declare inviolable all public and private property; and we hereby call upon all Justices of the Peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may receive that punishment which such violation of justice demands. In the present state of affairs, and during the continuation of so momentous a struggle, we earnestly request of all to desist from their labour from and after this day, the 1st of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguishes the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed. We, therefore, recommend to the proprietors of

public works, and all others, to stop the one, and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to. And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their King, and treat them as such.—By order of the Committee of Organization for forming a Provisional Government.—*Glasgow*, 1*st April*, 1820. Britons! God, justice, the wishes of all good men, are with us; join together, and make it one cause, and the nations of the earth shall hail the day when the standard of liberty shall be raised on its native soil."—With intent thereby to solicit and incite the troops, soldiers, and other the liege subjects of our said Lord the King, to aid and assist in making and levying insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established. And the said James Wilson, William M'Intyre, William Robinson, and William Watson, did, then and there, to wit, on the said 1st day of April, in the first year of the reign aforesaid, and on the said other days and times, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, with force and arms, maliciously and traitorously affix, set up, stick, and fasten, and cause to be affixed, set up, stuck, and fastened, to and upon divers walls and buildings, in divers public, open, and conspicuous places, with the intent that the same might be seen and read by the liege subjects of our said Lord the King, divers other printed papers, purporting to be addresses to the inhabitants of Great Britain and Ireland; containing therein, in the same manner and to the same effect as is above stated and set forth, as to the said printed papers, in the former part of this overt act particularly mentioned and set forth, with in-

tent thereby to solicit and incite the troops and soldiers, and other the liege subjects of our said Lord the King, to aid and assist in making and levying insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect, their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did publish, and cause and procure to be published, divers other printed papers, purporting "to be Addresses to the Inhabitants of Great Britain and Ireland," and stating therein, amongst other things, that they, the said false traitors, were at length compelled, from the extremity of their sufferings, and the contempt heaped upon their petitions for redress, to assert their rights at the hazard of their lives, and proclaim to the world the real motives which had reduced them to take up arms for the redress of their common grievances; that their principles were few and founded on the basis of our constitution, which were purchased with the dearest blood of their ancestors, and which they swore to transmit to posterity unsullied, or perish in the attempt; that equality of rights (not of property) was the object for which they contended, and which they considered the only security for their lives; that "Liberty or Death" was their motto; that they had sworn to return home in triumph, or return no more. And interrogating the soldiers, who, the said false traitors therein stated, were their countrymen, bound by the sacred obligation of an oath, to defend their countrymen and their King from enemies, whether foreign or domestic, whether they,

4th Overt Act.

the said soldiers, would plunge their bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of military despotism, to the unrelenting orders of a cruel faction, those feelings which they held in common with the rest of mankind; and recommending that the soldiers should at once come forward and free their country and their King from the power of those who held them too long in thraldom. In the present state of affairs, and during the continuation of so momentous a struggle, they, the said false traitors, earnestly requested of all to desist from their labour, from and after the 1st day of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence, until he was in possession of those rights which distinguish the freeman from the slave, namely, that of giving consent to the laws by which he is to be governed. They, the said false traitors, therefore recommended to the proprietors of public works, and all others, to stop the one, and shut up the other, until order was restored, as they would be accountable for no damages which might be sustained, and which, after that public intimation, the said proprietors could have no claim to; and they thereby gave notice to all who should be found carrying arms against those who intended to regenerate their country, and restore its inhabitants to their native dignity, that they should consider them as traitors to their country, and enemies to their King, and treat them as such; which said last mentioned printed papers, purported to be by order of the Committee of Organization for forming a Provisional Government, with intent thereby to solicit and incite the troops and soldiers, and other the liege subjects of our said Lord the King, to aid and assist in making and levying insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established. And the said James Wilson, William M'Intyre, William Robinson, and William Watson did, then and there, to wit, on the said 1st day of April, in the first year of the

reign aforesaid, and on the said other days and times, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, with force and arms, maliciously and traitorously affix, set up, stick, and fasten to, and upon divers walls and buildings, in divers public, open, and conspicuous places, with the intent that the same might be seen and read by the liege subjects of our said Lord the King, divers other printed papers, purporting to be addresses to the inhabitants of Great Britain and Ireland, stating therein, amongst other things, in the same manner, and to the same effect, as is above stated as to the said printed papers in the former part of this overt act, particularly mentioned, with intent thereby to solicit and incite the troops, soldiers, and others, the liege subjects of our said Lord the King, to aid and assist in making and levying insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the said 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did compose, write, and print, and cause and procure to be composed, written, and printed, with intent to publish the same, and maliciously and traitorously did publish, and cause to be published, divers addresses, proclamations, declarations, and writings, containing therein divers solicitations and incitements to the troops, soldiers, and liege subjects of our said Lord the King, to make and levy, and to aid and assist in making and levying insurrec-

5th Overt Act.

tion, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established; and did, then and there, maliciously and traitorously affix, set up, stick, and fasten to and upon divers walls and buildings, in divers open, public, and conspicuous places, with the intent that the same might be seen and read by the troops, soldiers, and other the liege subjects of our said Lord the King, divers other addresses, proclamations, declarations, and writings, containing therein divers solicitations and incitements to the troops, soldiers, and other the liege subjects of our said Lord the King, to make and levy, and to aid and assist in making and levying insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, together with divers other false traitors, whose names are to the said Jurors unknown, on the 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did assemble themselves together, with divers other liege subjects of our said Lord the King, to a great number, to wit, to the number of fifty and more, whose names are to the said Jurors unknown; and being so assembled together, did, then and there, remain and continue so assembled together for a long space of time, to wit, for the space of one hour then next following the time of their so assembling; and whilst they remained so assembled, by

6th Overt Act.

divers malicious, seditious, inflammatory, and treasonable speeches, did, then and there, endeavour to move, incite, cause, and procure the said last mentioned liege subjects of our said Lord the King, to raise, make, and levy rebellion, insurrection, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the said 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did purchase, procure, provide, and have divers large quantities of arms, to wit, guns, muskets, blunderbusses, pistols, swords, bayonets, pikes, pikeheads, and divers large quantities of ammunition, to wit, gunpowder, leaden bullets, slugs, and shot, with intention therewith to arm and array themselves and divers other false traitors, in order to attack, fight with, kill, and destroy the soldiers and troops of our said Lord the King, and other his liege and faithful subjects, and to raise, make, and levy insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the said 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day,

7th Overt Act.

8th Overt Act.

at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously, together with divers other false traitors, whose names are to the said Jurors unknown, then and there assembled, with divers offensive weapons, to wit, guns, pistols, swords, bayonets, pikes, pitchforks, sticks, and staves, did parade and march with great noise and violence in, through, and along divers public highways, towns, villages, and places, and did attack, beset, and enter into the houses and habitations of divers liege subjects of our said Lord the King, and did seize and take divers large quantities of arms and ammunition, to wit, 100 muskets, 100 pistols, 100 swords, 100 bayonets, 100 pikes, 100 guns, and other offensive weapons, 1000 bullets, 1000 slugs, 20 pounds weight of shot, 200 cartridges, and 100 pounds weight of gunpowder, from and out of the same houses and habitations, with intent, by and with the said last mentioned arms and ammunition, further to arm themselves and other false traitors, in order to attack, fight with, kill, and destroy the soldiers and troops of our said Lord the King, and other his liege and faithful subjects, and to raise, make, and levy insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did make, manufacture, and cause and procure, and order to be made, and manufactured, divers pikes,

9th Overt Act.

pike-heads, pike-shafts, and pike-handles, and divers large quantities of leaden bullets, leaden slugs, shot, and gunpowder, with intent therewith to arm themselves and other false traitors, for the purpose of attacking and fighting with, killing, and destroying the troops and soldiers of our said Lord the King, and other faithful subjects of our said Lord the King, and of making and levying insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors, as aforesaid, on the 1st day of April, in the first year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did train and drill, and cause and procure to be trained and drilled, as well themselves as divers others false traitors against our said Lord the King, whose names are to the said Jurors unknown, and maliciously and traitorously did submit themselves to be trained and drilled, and maliciously and traitorously did appoint divers false traitors, whose names are to the said Jurors unknown, to be officers and commanders over themselves and divers other false traitors, against our said Lord the King, whose names are to the said Jurors unknown, and maliciously and traitorously did submit themselves to be appointed as such officers and commanders as aforesaid, with intent the more effectually to enable themselves, and divers other false traitors, to attack, fight with, kill, and destroy, the soldiers and troops of our said Lord the King, and other his liege and faithful subjects; and to make, raise, and levy insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland; and to subvert

10th Overt Act.

and destroy the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect, their most evil and wicked treason and treasonable compassing and imagination aforesaid, they the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, together with divers other false traitors, whose names are to the said Jurors unknown, armed and arrayed in a warlike manner, that is to say, with guns, pistols, swords, bayonets, pikes, pike-heads, and other weapons, maliciously and traitorously did ordain, prepare, levy, and make war against our said Lord the King, within this his realm; to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland. And further to fulfil, perfect, and bring to effect, their most evil and wicked treason and treasonable compassing and imagination aforesaid, they the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did endeavour to seduce divers troops and soldiers of our said Lord the King from their duty and allegiance to our said Lord the King. And further to fulfil, perfect, and bring to effect, their most evil and wicked treason and treasonable compassing and imagination aforesaid, they the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark

11th Overt Act.

12th Overt Act.

13th Overt Act.

aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did detain and imprison divers liege subjects of our said Lord the King, with intent, then and there, by duresse of imprisonment, to compel the same liege subjects to join and accompany them, the said James Wilson, William M'Intyre, William Robinson, and William Watson, in their said wicked treason and treasonable compassing and imagination aforesaid. And further to fulfil, perfect, and bring to effect, their most evil and wicked treason and treasonable compassing and imagination aforesaid, they the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did force, compel, oblige, induce, and persuade, and cause to be forced, compelled, obliged, induced, and persuaded, divers other liege subjects of our said Lord the King, who then and there had and employed in their service divers great numbers of other liege subjects of our said Lord the King, as working persons and labourers, in various occupations, in which such last mentioned working persons and labourers worked for the maintenance and support of themselves and their families, to discharge and turn off out of work and employment the said working persons and labourers. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did strike, abandon, and give up their

14th Overt Act.

15th Overt Act.

work and labour, in which they respectively worked and laboured for the maintenance and support of themselves or their families, and desert, cease, and abstain from doing any work or labour, for the maintenance or support of themselves and their families, and maliciously and traitorously did force, compel, oblige, induce, and persuade, and cause and procure to be forced, compelled, obliged, induced, and persuaded, divers other liege subjects of our said Lord the King, being persons who worked and laboured for the maintenance and support of themselves and their families, to strike, abandon, and give up their work and labour, and to desist, cease, abstain from doing any work or labour for the maintenance and support of themselves or their families; and did then and there, as such false traitors as aforesaid, maliciously and traitorously hinder, obstruct, and prevent divers works and manufactories of divers liege subjects of our said Lord the King from being proceeded in and carried on. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors aforesaid, together with divers other false traitors, whose names are to the said Jurors unknown, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did send and convey, and cause and procure to go and to be sent and conveyed from divers places in that part of the united kingdom of Great Britain and Ireland called Scotland, to divers towns, villages, and other places, as well in that part of the said united kingdom called Scotland, as in that part of the said united kingdom called England, divers other false traitors, whose names are to the said Jurors unknown, in order that the said last mentioned false traitors might procure and incite liege subjects of our said Lord the King, in the said towns, villages, and places in the same parts of the said united kingdom, to

16th Overt Act.

join with, aid, and assist them the said James Wilson, William M'Intyre, William Robinson, and William Watson, in their evil and wicked treason and treasonable compassing and imagination aforesaid. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they, the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before that day as after, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did subscribe, contribute, pay, and cause, and procure to be subscribed, contributed, and paid, divers sums of money, as well for the purpose of printing, publishing, procuring, and circulating divers seditious, inflammatory, and treasonable proclamations, addresses, and other writings and printings, with intent to encourage and incite the troops and liege subjects of our said Lord the King, to insurrection and rebellion, against our said Lord the King, as of purchasing and procuring with the said sums of money, arms, and ammunition, to wit, guns, muskets, bayonets, pikes, pike-heads, pike-shafts, gunpowder, leaden bullets, slugs, and shot, with intent to arm themselves, and divers other false traitors, with the said last mentioned arms and ammunition, in order to attack, fight with, kill, and destroy the soldiers and troops of our said Lord the King, and other his liege and faithful subjects, and to raise, make, and levy insurrection, rebellion, and war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and to subvert and destroy the government and constitution of this realm, as by law established. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the

17th Overt Act.

18th Overt Act.

1st day of April, in the first year of the reign aforesaid, and on divers other days and times as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did give and cause to be given, notice to divers persons, of meetings to be held for the purpose of consulting upon the means of raising war and rebellion against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and did summon, request, and require, and cause to be summoned, requested, and required, divers persons to attend at the said several meetings, for the purpose last aforesaid. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid, they the said James Wilson, William M'Intyre, William Robinson, and William Watson, as such false traitors as aforesaid, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously did exhort, encourage, persuade, and incite, as well divers liege subjects of our said Lord the King, whose names are to the said Jurors unknown, as divers other false traitors, whose names are also to the said Jurors unknown, to procure, provide, and possess themselves of, and with arms, to be employed by such last mentioned subjects and traitors, in making insurrection, rebellion, and war, against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and in subverting and destroying the government and constitution of this realm as by law established, in contempt of our said Lord the King and his laws, to the evil example of all others, contrary to the duty of the allegiance of them the said James Wilson, William M'Intyre, William Robinson, and William Watson,

19th Overt Act.

against the form of the statute, in such case made and provided, and against the peace of our said Lord the King, his crown and dignity.

Second Count.—And the Jurors aforesaid, upon their oath aforesaid, do further present that the said James Wilson, William M'Intyre, William Robinson, and William Watson, being subjects of our said Lord the King, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, and wholly withdrawing the love, obedience, fidelity, and allegiance, which every true and faithful subject of our said Lord the King should, and of right ought to have towards our said Lord the King, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, together with divers other false traitors, whose names are to the said Jurors unknown, arrayed and armed in a warlike manner, that is to say, with guns, muskets, blunderbusses, pistols, swords, bayonets, pikes, pike-heads, pitch-forks, clubs, and other weapons, being then and there unlawfully, maliciously, and traitorously assembled and gathered together against our said Lord the King, wickedly, maliciously, and traitorously did levy and make war against our said Lord the King, within this his realm, to wit, within that part of the united kingdom of Great Britain and Ireland called Scotland, and being so there and then assembled together, arrayed and armed against our said Lord the King, as aforesaid, did then and there, to wit, on the said 1st day of April, in the 1st year of the reign aforesaid, and on the said other days and times, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously parade and march in a hostile manner, in and through divers towns, villages, places, and public highways, and did then and there, to wit,

on the said 1st day of April, in the 1st year of the reign aforesaid, and on the said other days and times, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously array and set themselves in warlike and military order, battle, and array, against our said Lord the King, and did then and there maliciously and traitorously attempt and endeavour, by force and violence, to subvert and destroy the government and constitution of this realm as by law established, in contempt of our said Lord the King and his laws, to the evil example of all others, contrary to the duty of the allegiance of them, the said James Wilson, William M'Intyre, William Robinson, and William Watson, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity.

Third Count.—And the Jurors aforesaid, upon their oath aforesaid, do further present that the said James Wilson, William M'Intyre, William Robinson, and William Watson, being subjects of our said Lord the King, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, and wholly withdrawing the love, obedience, fidelity, and allegiance which every true and faithful subject of our said Lord the King should, and of right ought to bear towards our said Lord the King, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously amongst themselves, and together with divers other false traitors, whose names are to the said Jurors unknown, did compass, imagine, invent, devise, and intend to deprive and depose our said Lord the King, of and from the style, honour, and kingly name of the imperial crown of this realm, and the same compassing, imagination, invention, device, and in-

tention, did then and there express, utter, and declare, as well by publishing divers printings and writings hereinafter mentioned, as by divers overt acts and deeds hereinafter also mentioned.

(The indictment then states the same nineteen overt acts charged in the first count.)

Fourth Count.—And the Jurors aforesaid, upon their oath aforesaid, do further present that the said James Wilson, William M'Intyre, William Robinson, and William Watson, being subjects of our said Lord the King, and not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, and wholly withdrawing the love, obedience, fidelity, and allegiance which every true and faithful subject of our said Lord the King should and of right ought to have towards our said Lord the King, on the 1st day of April, in the 1st year of the reign aforesaid, and on divers other days and times, as well before as after that day, with force and arms, at the parish of Avendale aforesaid, in the county of Lanark aforesaid, in that part of the united kingdom of Great Britain and Ireland called Scotland, maliciously and traitorously, together with divers other false traitors, whose names are to the said Jurors unknown, did compass, imagine, invent, devise, and intend to levy war against our said Lord the King, within this his realm, in order by force and constraint to compel him to change his measures and counsels, and the said last mentioned compassing, imagination, invention, device, and intention, did then and there express, utter, and declare, as well by publishing divers printings and writings, hereinafter mentioned, as also by divers overt acts and deeds, hereinafter also mentioned.

(The indictment then states the same nineteen overt acts charged in the first count.)

A precept issued to the Sheriff for summoning a petty Jury to try James Wilson and William M'Intyre.

[The Court adjourned till Monday 10th July, when Grand Jury again ordered to attend.]

Monday, 10*th July*, 1820.

SEDERUNT,
LORD PRESIDENT,
LORD JUSTICE CLERK,
LORD CHIEF BARON.

Mr John Archibald Murray, and Mr John Schank More assigned as Counsel for the prisoners John May and Alexander Graham.

Mr Murray and Mr James Graham assigned as Counsel for the prisoners William Campbell, George Allan, and Matthew Bogle.

The prisoners were severally arraigned, and they all pleaded Not Guilty.

The Grand Jury were informed that they could not at present be discharged, but, in case their further attendance became necessary, they should have due notice.

[The Court adjourned till Thursday, the 20th day of July, 1820.]

THE

TRIAL

OF

JAMES WILSON.

Glasgow, Thursday, 20th July, 1820.

PRESENT.

The Right Honourable CHARLES HOPE, Lord President.
The Right Honourable DAVID BOYLE, Lord Justice Clerk.
The Right Honourable Sir SAMUEL SHEPHERD, Lord Chief Baron.
The Right Honourable Sir WILLIAM ADAM, Lord Chief Commissioner.
The Honourable Lord PITMILLY.

Counsel for the Crown.

The LORD ADVOCATE.
The SOLICITOR-GENERAL.
Mr SERJEANT HULLOCK.
Mr DRUMMOND.
Mr MACONOCHIE.
Mr HOPE.

Agent.

JAMES ARNOT, W. S.

Counsel for the Prisoner.

Mr MURRAY.
Mr MENTEITH.

Agents.

Messrs GRAHAM and MITCHELL, W. S.

The Court being opened, James Wilson was set to the bar.

The first name on the Petit-Jury, panel having been called,

Mr Drummond.—Is it necessary now to ask the Jury whether they are qualified?

Mr Knapp.—It is the usual course.

Mr Murray.—I do not wish it.

Lord President.—It certainly is more beneficial to the prisoner that it should be done, because, suppose some distance down the list there are four or five names he would not wish to challenge, he may save his challenges till their names are called, and then find they do not appear, or that they are not qualified.

Mr Murray.—I certainly was disposed to waive it, but, after what your Lordship has stated, I see it is important to the prisoner that the form should now be gone through.

The Jurors returned by the Sheriff were called over, when it was ascertained that the following were not freeholders of the county of Lanark, to the amount of forty shillings a-year:—

Samuel Forest, farmer.
Robert Buchanan, merchant.
James Darnley, manufacturer.
William Dickson, coal master.
John Patrick, merchant.
Thomas Dykes, writer.
Henry Scott, baker.
Duncan Robert Leckie, manufacturer.
William Kyle, land-surveyor.

The following Jurors were excused:—

James Oswald, Esq. on account of ill health.
Robert Bogle, Esq. on account of ill health.
Robert Findlay, Esq. on account of being a magistrate of Glasgow.
David Crawford, Esq. on account of ill health.
Matthew Perston, Esq. on account of ill health.
William Somerville, gentleman, on account of ill health.

James Gilchrist, gentleman, sworn.
George Rowan, Esq. sworn.
Thomas Douglas, gentleman, sworn.
James Elder, writer, challenged by the prisoner.
Allan Fullarton, messenger-at-arms, challenged by the prisoner.
John Woodrop, gentleman, sworn.
James Ewing, merchant, sworn.

THE JURY.

David Laird.
Thomas Muir.
John Lockhead.
Robert Grandberry Baillie.
Thomas Somerville the younger.
Andrew Smith the younger.
James Howison.
James Gilchrist.
George Rowan.
Thomas Douglas.
John Woodrop.
James Ewing.

Lord President.—I have to repeat the caution given at Stirling, that on no account whatever, any part of the proceedings of this Trial, either the Speeches of Counsel, or the Evidence, are to be published by any person whatsoever; not only till this Trial is at an end, but till all the others are completed; and let this order be attended to, under the highest pain this Court can inflict.

The Jury were charged with the Prisoner, in the usual form.

The Indictment was opened by Mr Hope.

Lord Advocate.—May it please your Lordship,—Gentlemen of the Jury,

It is impossible, Gentlemen, to consider the object and

purpose of our present inquiry, and not to feel its weighty importance. Whether we look to the Bar, to the Bench, or to you, Gentlemen, who are now seated in that box, we must all feel that we have duties of great magnitude to discharge, the performance of which is rendered the more difficult from their being in some respects new to us.

I had hoped that our day would pass over without its being necessary that we should be called on to study the Law of Treason, or make ourselves masters of the forms attending its trials; events, however, over which we have had no control, have rendered this impossible, and we are now, therefore, called upon to discharge the duties which are imposed upon us respectively, in the best way in our power. Of that duty, Gentlemen, I need not say the most important part devolves upon you; to you has been confided the fate of this unhappy prisoner now at your bar; he is entitled, at your hands, to look for a strict and narrow investigation into the evidence brought forward against him; to demand that you shall weigh that evidence with all that favour and indulgence which the lenient spirit of the law of our country has ever extended to persons in his unfortunate situation; and if the matter is brought to a doubt, that such doubt shall be interpreted in his favour; on the other hand, the peace of these lands, the quiet and happiness of us all, call loudly that treason, if committed, shall not go unpunished; and if such evidence shall be produced to you as shall satisfy your minds that this unhappy man has committed that great crime, then do I say that the country is entitled to ask at your hands a verdict which I trust will have the effect, and the only true effect of all punishment, namely, that of deterring others from putting themselves in a similar situation, and thus preventing the recurrence of this crime in our land.

Gentlemen, my duty is to state the law applicable to this case, and the facts which we propose to instruct in support of the charge against this individual; and I shall endeavour to do this as shortly as possible, and the more so, because I feel that a very considerable portion of your time has been occupied in listening to the whole detail of this long

Indictment, which, in cases which occurred elsewhere, was not thought necessary. Gentlemen, if in stating the law to you, I should in any respect err, I shall be under the control of that quarter to which alone you can look for guidance and direction—I mean the Bench; for whatever statements, in point of law, may come from this side of the bar, or from the other, these are not to be considered by you as authority, but you will look alone to the Bench—to those learned Judges, who are qualified to lay before you a correct view of the law on the subject. With respect to the facts, I trust you will give me credit for not intentionally mis-stating them; but in case I shall represent them in a way which is not supported by evidence, I need not tell you it is the evidence you are to attend to, and not to any statement of mine.

Gentlemen, you all know that at the Union of Scotland with England, the Law of Treason was wisely and necessarily rendered the same in both parts of the island. I shall not waste your time with stating to you the old Law of Scotland previous to that period; but I may notice, that the benefit derived by us, in consequence of the introduction of the English Law of Treason into Scotland, was most essential to the subjects of this kingdom; it was of essential benefit, from the moderation and the care it took of the interests of the subject; it was beneficial, from being clear, and from all its rules having been fixed and laid down by great legal authorities—advantages which could not have accompanied any new law which might then have been passed.

In addition to the Law of Treason, the English forms of trial were likewise at the same period made ours; these were considered highly beneficial to the subject, though they did not differ materially from those which every individual in this country enjoys in other crimes. On one point there is an advantage, namely, that no person can be put upon his trial without a Grand Jury of his country finding that there are grounds for the accusation. In general that power rests with an officer of the Crown; and however it may have been executed, yet it must be very satisfactory that on

a question of a political nature, the first step should not rest with the public prosecutor, but with a Jury drawn from the quarter where the crime has been committed.

Gentlemen, a Grand Jury of this county has accordingly found an Indictment against this prisoner, consisting of four counts or charges, which have been detailed to you by my brother who addressed you last, and are founded upon two statutes, one of them a very ancient statute, known by the name of the Statute of Treasons, passed in the 25th of Edward II. chapter 5; this law provides, that when a man "doth compass or imagine the death of our Lord the King; and if a man do levy war against our Lord the King in his realm, or be adherent to the enemies of our Lord the King in his realm, giving to them aid or comfort in the realm, or elsewhere, and thereof be provably, that is, upon sufficient proof," attainted of open deed by the people of his condition, he commits Treason. There are two cases provided for in this enactment: first, the individual who shall compass or imagine the death of the King, is guilty of Treason; second, he that shall levy war against the King, shall be guilty of Treason.

A subsequent act was passed, which, without altering materially the law, has rendered certain points more explicit, namely, the 36th George III. chapter 7; it was first a Temporary Act, but has since been made permanent; it enacts, "that if any person or persons whatsoever, after the day of the passing of this act, during the natural life of our most gracious Sovereign Lord George the King, and until the end of the next Session of Parliament, after a demise of the Crown, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm, tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the same, our Sovereign Lord the King, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the Imperial Crown of this realm, or of any other of his Majesty's dominions or countries, or to levy war against his Majesty, his heirs and successors, within this realm, in order, by

force or constraint, to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both Houses, or either House of Parliament, or to move or stir any foreigner or stranger, with force, to invade this realm, or any other of his Majesty's dominions or countries, under the obeisance of his Majesty, his heirs and successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed being legally convicted thereof, upon the oaths of two lawful and credible witnesses, upon trial, or otherwise convicted or attainted by due course of law, then every such person and persons, so as aforesaid offending, shall be deemed, declared, and adjudged to be a Traitor." These are the words of the law, as laid down in these various statutes; they make, you observe, Gentlemen, the compassing or imagining the death of the King to be Treason.

In other crimes, you know it is not sufficient to imagine the crime, it must be executed. The crime of murder cannot be committed, unless carried into effect by the death of the individual; in the case of the Crown it is different; there the mere intention is Treason, by the law, in order to hedge round the life of our Sovereign with that due care which his great state necessarily demands. But while intention is thus made to constitute the crime, the law is careful that that intention shall be clearly expressed; it therefore requires certain overt or open acts shall be done before a person shall be convicted of that crime.

I am unwilling to detain you, by entering into the views of this statute, as to compassing the death of the King, because I have to state to you, that we consider the present case as more strictly falling under that part of the act which relates to the levying war against the King. I think, however, taht, was it necessary, I should have no difficulty in satisfying you, that a charge amounting to the levying war would come under the first branch of compassing and imagining the death of the King, because no war can be levied without putting the life of our Sovereign in danger.

It is accordingly laid down in Foster, and all other authorities, that such a charge does amount to an act of compassing the death of the King as much as of levying war. But, confining our observations to the last branch of the statute, the first question is, What is levying war? That is a question of law, in which you must be instructed by the Judges of our land; for I need not tell you how much the subjects of this country are interested in correctly knowing what such a charge consists in, in order that they may duly regulate their conduct; for if such points were left to juries to decide, it would be impossible to know how the law really stands; for one jury might lay down one thing to be levying war, and another quite the contrary. In general, what I mean to state to you is, that whenever an insurrection takes place, having for its object, not a private, but a general public purpose, that is a levying of war, and consequently Treason.

Gentlemen, to accomplish that end it is not necessary that the attempt should be directed against the person of the King,—it is sufficient if it is against the King's government and majesty; and the very last memorable case that occurred was one of that kind. Thistlewood and his companions suffered under the charge of levying war; and there the overt act was an attempt against his Majesty's Cabinet Ministers, not against the King personally. Neither is it necessary that the war should be of a regular description, that the troops should be marshalled, and in order of battle, like soldiers in actual service; it is enough that those concerned are armed, and that they shew by their conduct that they are determined to carry their object by force.

Gentlemen, the great object of inquiry is, whether the purpose is public or private; because, if the insurrection be for a private object, whether it be a legal or an illegal one, however the individuals may be punishable for riot or other crimes, still that is not Treason; the rising must be for a general purpose connected with the state of the country; but if you shall be satisfied from the facts, that it was the intention of the individual under trial to compel, by force, an alteration of the constitution, or to compel a change of

measures in any respect, however small, that is a levying of war against the King, and punishable under the act.

Instead of fatiguing you with my statements on this subject, I shall refer you to the authority of Judge Foster, to whom you may give, undoubtedly, the most implicit confidence. Gentlemen, this great legal authority thus explains the law, in page 211 of the folio edition :—" Every insurrection which, in judgment of law, is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil councillors from about him,—these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war or not. Insurrections, in order to throw down all inclosures, to alter the established law or change religion, to enhance the price of all labour or to open all prisons, all risings in order to effect these innovations of a public and general concern, by an armed force, are, in construction of law, High Treason, within the clause for levying war; for, though they are not levelled at the person of the King, they are against his Royal Majesty; and, besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property and all government too, by numbers and an armed force. Insurrections, likewise, for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the King, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest,—risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war, for they are levelled at the King's crown and royal dignity." Here, then, is the law distinctly laid down for you; and I do not believe it will be disputed on the other side, that, where an insurrection takes place, accompanied by force, having for its object a national purpose, that is a levying war against the King, and Treason by the law.

The points, therefore, to which your attention will necessarily be directed, are, whether or not there was in the

case which I am now to state to you, a rising—whether its purpose was of a public or private nature. It will be my duty to make out to you that there was a rising, and that its purpose was a general one; and, having made out this, it will be then necessary to consider whether the man at your bar was accessary to this criminal proceeding.

Gentlemen, in stating the facts to you, it is not necessary for me to go further back than the beginning of the month of April last, when it is known I believe to most here, and will be instructed by proof, that an Address made its appearance in this city and in all the vicinity, the terms of which have been this day read in the indictment; an Address bearing to be to the inhabitants of Great Britain and Ireland, and calling upon them to take up arms, in order, as therein stated, to regain their rights. Gentlemen, I will not go over the terms of that Address; I presume it to be quite unnecessary; no man can read it, or consider it for a moment, and not be satisfied that it carries on its face the most direct and positive Treason. It states the determination of the persons therein referred to, to assert their rights at the hazard of their lives, "and to proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have reduced them to take up arms for the redress of their common grievances." It expressly states the purpose, to take up arms. It then goes on to state the determination of these persons either to return victorious, or to return no more; and concludes by calling on all the persons engaged in any trade "to cease from their labour, from and after the 1st of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguish the freeman from the slave, namely, that of giving consent to the laws by which he is to be governed;" and this manifesto bears to be subscribed "By order of the Committee of Organization for forming a Provisional Government." Gentlemen, I am unwilling again to read the terms of that document after it has been already read, for I think it is impossible that any person can state to you to-day that this does not contain the most gross and positive Treason.

Gentlemen, the effects of this proclamation were such as possibly are known to you, but at the same time will be proved; for it is not private knowledge you are to go by, but the evidence that shall be brought before you. The consequences of the publication of this manifesto were, that in this city and its vicinity, labour from that moment ceased, all manufactories, with a very few exceptions indeed, stopped work—they were deserted, and individuals paraded the streets, not in the usual way, but in a military style, marching in ranks, and in a manner that created the utmost alarm and terror to the well-disposed inhabitants, who were obliged, in many cases, to shut up their shops, and to submit to a state of things unexampled in this place, or this country; this continued for a considerable period, for the greater part of that week. This proclamation was not confined to the town of Glasgow, but was circulated and posted up in all the adjoining villages, and particularly in the town of Strathaven, in which town this person now at the bar resides, and where the scene I am about to relate took place.

Gentlemen, it will be proved to you, that it was the view of the framers of this proclamation that there should be a rising upon the night of Thursday the 6th of April, in order to accomplish the object in view. That this was known at Strathaven, that it was known at various other places, not only in the vicinity, but at a very considerable distance from Glasgow. Those persons at Strathaven who were disposed to adopt the recommendation contained in this Address followed, from the beginning, the line of conduct which it recommended, by ceasing to work; and further, upon the night of Tuesday the 4th of April, they held a meeting at the extraordinary hour of between ten and eleven o'clock at night, at a place called Three Stanes, where the subject of discussion was, whether or not they should immediately proceed to seize arms from every individual in the neighbourhood from whom they could be obtained? Whether the whole party were unanimous upon this resolution it is not exactly in my power to state; but certain it is, that this determination was adopted by a very considerable number of them; and those who adopted it immediately pro-

ceeded to the house of the unfortunate individual at the bar,—a house where, it will be proved to you by other evidence, the meetings of the disaffected were regularly held. The Union Societies met there, this prisoner being secretary of them all; and here, too, all those seditious publications, such as the Spirit of the Union, and the Black Dwarf, were generally seen and perused.

The individuals already referred to having come to this house, the night was spent in parties sallying forth to different houses in the vicinity, and by force taking possession of all guns and arms which they found in any of these houses; this course was followed, not in one instance, but in four or five instances; and on all these occasions, the individuals who so sallied forth uniformly returned with their spoil to the house of this prisoner. I do not believe he went with any of them; but at his house the people assembled, mostly in arms; from his house they issued forth, and took by force, arms of the individuals in whose possession they found them, and to his house they returned with the fruits of their plunder.

Thus, Gentlemen, having passed the night, on the morning of Thursday, the 6th, it will be proved to you, that, at eight o'clock, in broad day-light, a party of these persons, armed with pikes and guns, and with such other arms as they were possessed of, marched from the house of this prisoner, carrying with them a flag of the Union of Strathaven, and bearing a motto—"Scotland Free, or Scotland a Desart." In this party marched the individual at your bar, with a drawn sword in his hand. The party marched from his house in the order that I have stated, armed in the way that I have represented to you, with the object of proceeding on to Glasgow;—for I ought before to have mentioned to you, that upon the preceding night, a person of the name of Shields came from Glasgow, reporting that the whole of that town was in arms,—that Glasgow was up, as it was stated; and therefore calling on the reformers in Strathaven to come and join their brethren in that city. In compliance with that requisition, the detachment I have

mentioned to you, attended by the prisoner, marched from his house in open day-light, on Thursday morning, and a party was at the same time sent off to take arms from a person who resided at no great distance from the town. The detachment then marched in this order on towards Glasgow, where they believed that a revolt had taken place; they proceeded to Kilbride, seven miles from Strathaven. It then doubtless appears, that, having met a gentleman and lady in a gig, and having inquired what was the state of Glasgow, they were informed that all was quiet there. Upon this the prisoner thought it wise to withdraw; and having taken himself to the house of a brother hosier in Kilbride, and thus separating himself from the rest of the party, the individuals composing which threw away their pikes, and returned home, or absconded to other places, where they have not since been found.

I have shortly ran over these leading circumstances, and I wish rather that the case should come out stronger, than that my statement should exceed the proof; and if these facts shall be established, I think you can have no doubt that there was here an insurrection—that there was here a regular rising of these persons, resolved upon at the preceding night's meeting, consisting of a considerable number of individuals, and who expected to be joined by more. They rose in arms, and marched in the way I have described to you towards Glasgow.

Now, Gentlemen, the next question is, *quo animo* did they do so?—what was their purpose?—That is a substantial matter of fact. If I establish the statement I have made to you, I humbly conceive that there cannot be a doubt on any man's mind that the purpose was of a general public nature; to aid by their presence other people in a like state of rebellion—to produce a change in the government of this country—there is no other object that can be supposed to have been in view; and if an innocent or different purpose can be figured, it will be for the other party to explain its nature and establish its existence. From the acts in which this party engaged, and from the expressions which they used, I submit that their only object was to overturn

the constitution of the country by force, or to be instrumental in doing so; and if I shall make out this to your satisfaction, I shall submit to you, without fear or doubt, that that is a levying of war, and Treason, according to the dictates of common sense, and in accordance with every authority in the law of Treason in which any reliance can be placed.

I will not detain you with a general reference to law authorities on this subject, but shall quote one sentence from the highest living authority that can be cited,—I mean the authority of the Chief Justice of England, upon the trial of certain persons charged with Treason, as being concerned in insurrections that took place at Derby in the year 1817 —insurrections that were exactly of a character similar to that which I have now detailed, consisting of persons assembling together with a treasonable purpose, arming themselves with pikes and with guns, and proceeding to Nottingham to join others, whom they expected to find in a state of insurrection. In a case of that sort, where there was no actual conflict, but where the parties merely went the length of providing arms, and marching out armed with the same view as here, the law, as laid down by the Chief Justice of England, is comprehended in the passage which I shall now read to you, and which cannot fail to carry conviction to the minds of every individual whom I have now the honour to address. It occurrs in volume 2d, page 298. He says, "This is a charge that an assembly of persons met together, and armed themselves for the purpose of assailing and endeavouring to overturn the established government of the country,"—just the same charge that we exhibit against this individual,—"and actually moved forward for the accomplishment of that object. This is the charge; and that such an assembly, acting in such a manner, and for the accomplishment of such an object, is a levying of war against the King, who is the head and chief of the government, is a proposition which no Court or Judge, nor any writer on the law of England, has ever questioned. In every Court, and on every occasion where the point has arisen, this proposition has been laid down

and acted upon as a clear and unquestionable proposition of law." Gentlemen, I can quote no higher authority, none more precise, and none less liable to doubt and question.

If, then, you shall be satisfied that there was a rising,—that the object was for a general purpose, the only question behind will be, whether the individual at the bar was accessory to this criminal proceeding; and if the facts I have stated shall come out, that these persons whom I have described assembled at the prisoner's house; that they marched from it to do these acts of violence which I have detailed, collecting arms by force from every quarter, and that the prisoner marched armed in broad day-light towards Glasgow for a distance of eight miles, thus excluding the possibility of what he so did being the consequence of restraint or of force, it will be impossible for you to entertain a doubt that the prisoner was accessory to that rising, and must be answerable for it.

If it shall be said that the object was not likely to be gained, your good sense will suggest that no weight is to be attached to that circumstance. I agree upon the utter folly and absurdity of these individuals expecting success, to think that their efforts could overturn the kingly government of this country, living in the bosoms of its inhabitants; that any exertions of such men could overturn the weight of the Parliament of England, supported by the general feelings of all orders of this country; for though there may be a few individuals in this neighbourhood who might be disposed to commit Treason, I believe the great body of the people of Scotland are loyal, and would lose the last drop of their blood before they allowed a change in the Constitution of these realms. But that is not the question; —if there is a doubt as to the real intention of the parties so engaged, then the improbability of success might weigh; but if you are satisfied they did mean it, the improbability of success cannot alter the question. It was folly to suppose it, but if they did suppose it, and if they acted upon it under the impression that those on their side were more numerous than they were, and that the whole country were to rise and assist them,—if they acted under that persuasion—and act they did—the chance of such a scheme not succeeding can-

not in the sense of any good man be allowed to weigh for a moment on the question.

It does not occur to me necessary to state any thing further. I leave the case in your hands. I am confident you will pay a due attention to the interest of the prisoner, and to those of the country; I am confident that the verdict you will return will be alike creditable to yourselves, and satisfactory to the public.

EVIDENCE FOR THE CROWN.

William Aiton, Esq.—*sworn.*

Examined by Mr Drummond.

Q. Are you Sheriff-Substitute of Hamilton?

A. I am.

Q. Look at that declaration, *(handing a paper to the witness,)*—was that declaration emitted in your presence by the prisoner at the bar, freely and voluntarily?

A. It was.

Q. He being of sound mind, and in his sober senses?

A. Perfectly so.

Cross-examined by Mr Murray.

Q. Where was it?

A. At Hamilton.

Q. State, as nearly as you can recollect, what you said at the time to the prisoner when you took his declaration.

A. I remember no particular thing that I said to him. I think I told him that he was at liberty to say what he thought proper; but my opinion was, that the more candid he was in his declaration, the better it would be for himself. I think that is what I generally say to people in that situation.

Q. Did you say it would be better for him to tell the truth?

A. No; I said he was at full liberty to say what he thought proper,—it would be taken down as he said it; but my opinion was, that he should be candid and tell the truth.

Q. And the more candid, you say, the better?

A. I said, if I were in the same situation, I would be candid, and speak explicity.

Q. And the more candid the better?

A. Perhaps I might use those words; but I could not say.

Q. Or words to that effect?

A. Probably it was.

JAMES THOMPSON—*sworn.*

Examined by Mr Drummond.

Q. Are you the Sheriff-Clerk Depute at Hamilton?

A. Yes.

Q. Did you sign that declaration? (*handing a paper to the witness.*)

A. Yes.

Q. In the presence of Mr Aiton, the Sheriff-Substitute?

A. Yes.

Q. It was emitted freely and voluntarily?

A. Yes.

Q. Was the person in his sound mind and sober senses at the time?

A. He was.

ALEXANDER PRINGLE, *Esq. Advocate—sworn.*

Examined by Mr Drummond.

Q. Was that declaration emitted in your presence by the prisoner, freely and voluntarily? (*handing a paper to the witness.*)

A. Yes.

Q. Did he appear to be in his sound mind and sober senses?

A. He was.

Q. It was read over, as this bears, I suppose?

A. Yes.

Cross-examined by Mr Murray.

Q. Where did you take that declaration?

A. In the Bridewell at Glasgow.

Q. Do you recollect what you said to the prisoner?

A. I do not recollect particularly, at this moment, any thing in particular.

Q. Did you say any thing? Just state the import of it, as nearly as you can recollect.

A. I do not recollect having stated any thing more than the usual caution, which I was in the habit of stating to all prisoners brought before me to make declarations, that they were not obliged to answer any thing.

Q. Did you say any thing more with regard to it?

A. I certainly do not recollect saying any thing more than the caution I usually give to prisoners under those circumstances.

Q. It is sometimes said to a prisoner, that he should be careful not to criminate himself, and that he would derive certain advantages; did you say any thing of that kind?

A. No.

Q. Nor to that effect?

A. Nor to that effect.

Q. You said no more than what you have stated?

A. Certainly not.

Lord President.—In what capacity were you acting then?

A. As Sheriff-Substitute of the county of Lanark.

Mr Murray.—Had you an appointment?

A. I had.

Q. Have you got it?

A. No, I have not; it was recorded in the books here, and left at the Sheriff-Clerk's Office.

Q. When did you see that appointment?

A. I do not recollect the precise day; it was towards the latter end of the month of April, after I returned from Strathaven with the Yeomanry.

Q. You had been with the Yeomanry there?

A. I had.

Q. And then you had the appointment?

A. I had after I came here.

Q. And you took that examination at the Bridewell, after you had it.

A. I did.

JAMES HARDIE, Esq.—*sworn.*

Examined by Mr Drummond.

Q. Are you a witness to that declaration? (*handing a paper to the witness.*)

A. I am.

Q. It was emitted by the prisoner freely and voluntarily?

A. Yes.

Q. And he appeared to be in his sound mind and sober senses?

A. Yes.

Q. In the presence of Mr Pringle, who was acting as Sheriff-Substitute?

A. Yes.

Cross-examined by Mr Murray.

Q. Were you present the whole time that was taken?

A. I was.

Q. Do you recollect any thing that was said by Mr Pringle, before the prisoner gave it?

A. I cannot charge my memory with any thing particular.

Q. Did he say any thing at all?

A. I do not recollect.

Q. Try and recollect. Did he advise the prisoner not to criminate himself?

A. I think so; it is generally done, I know; I think he did.

Q. Did he say any thing more?

Lord President.—His only cause of recollection is, that it was generally done.

Mr Murray. I wish to try his recollection. Did he say any thing more, that it would be to his advantage to be candid?

A. I cannot charge my memory—I think it was done in every one of them.

Q. Do you remember what was said in every one of them?

A. In giving evidence, that he need not criminate himself—that he need say nothing which would criminate himself.

Q. Was any thing further said about telling the truth?

A. I do not recollect.

Q. Or about being candid?

A. I do not recollect.

Q. On that particular occasion?

A. On that particular occasion.

Q. Have you a distinct recollection of what passed?

A. I have not a distinct recollection at this distance of time.

Q. Do you recollect any thing said during the time while it was taking down?

A. I do not.

Q. You have no recollection of any observation of that sort being made then?

A. I have not.

JAMES THOMPSON of Strathaven—*sworn.*

Examined by Mr Solicitor-General.

Q. Do you reside in Strathaven?

A. Yes.

Q. What are you—a carter?

A. Yes.

Q. Look at the prisoner. Do you know the prisoner?

A. Yes.

Q. Do you recollect having been near his house, on a Wednesday in the beginning of April?

A. Yes, on a Wednesday evening.

Q. Do you recollect the day of the month?

A. It was upon the 5th.

Q. What time of night was it?

A. It was between eleven and twelve; somewhere thereabouts.

Q. Did you go near to his house?

A. Yes, both to the door and the window; the window was screened.

Q. Did you hear any thing going on?

A. I heard a noise in the house; it was like a great smithy; I could compare it to nothing else; there was a great knocking and hammering.

Q. Did you hear any body speaking?

A. Yes, I did.

Q. Did you hear many voices?

A. I heard a good many.

Q. As if in conversation?

A. Yes.

Q. Did you observe any thing else?

A. No, I observed nothing else; I saw parties going into the house, but I took no notice; I went back from the door.

Q. Had those people any thing with them, that were going out and in?

A. No; I did not see any thing; I was not very near to them.

Q. Did you go down to the road to Glasgow the next day?

A. Yes, upon the Thursday.

Q. At what time?

A. I do not remember; it was in the morning some time.

Q. Did you see any thing there?

A. Yes, I *seed* the party that was there.

Q. You saw a party marching out of Strathaven?

A. Yes.

Q. What had they with them?

A. Some of them had pikes, and swords, and guns.

Q. Had they a flag with them?

A. Yes.

Q. Did you see what was on it?

A. Scotland Free, or a Desart—Strathaven Union Society.

Q. How many people might there be?

A. There were between ten and fifteen I think, there abouts.

Q. Were they all armed?

A. There were two that were not armed—one that they called Stevenson, had no arms, and one that they called the delegate.

Q. Do you know the delegate's name?

A. I heard them say that his name was Shield, but I do not know, he was a stranger to me.

Mr Murray.—That is not evidence.

Lord President.—We could not know that till he had given his answer, of course it is not taken down.

Mr Solicitor-General.—Who carried the flag, do you know?

A. William Watson.

Q. Is he a Strathaven man?

A Yes.

Q. Can you name any body else that you saw there?

A. There was John Morrison, and William Watson, and James Wilson here.

Q. The man at the bar?

A. Yes; and John Walters.

Q. What is he—a shoemaker?

A. A shoemaker, and William Howat and Robert Hamilton.

Q. Do you know if there be any relationship between Walters and the prisoner?

A. Yes, Walters married a daughter of his.

Q. Had the prisoner, Wilson, any thing in his hand?

A. He had an old sword.

Q. In what direction did the party go?

A. The flag marched in the front, and there were three with guns afterwards.

Lord President.—Which way were they going?

A. They went on the Glasgow road.

Q. Towards Glasgow?

A. Yes.

Mr Solicitor-General.—Did you follow them?

A. I followed them for a quarter of a mile, and they passed me three or four times in the road.

Q. Do you know a man of the name of Robinson?

A. Yes.

Q. William Robinson?

A. Yes.

Q. Was he with them?

A. Yes.

Q. Did you then leave them?

A. Yes.

Q. You saw no more of them?

A. No, they marched on.

Q. Did you see that party afterwards?

A. No, I never saw any of the party till I saw Wilson apprehended.

Cross-examined by Mr Murray.

Q. You say you saw Wilson carrying a sword?

A. Yes.

Q. Describe how he was carrying it?

A. He was carrying it up by his side, like as if he was going to hide it.

Q. He was not flourishing it, or encouraging them?

A. No.

Q. Did you see what kind of sword it was—was it an old sword?

A. It was an old sword, just with a piece of wood at the end of it.

Q. How did Wilson look at the time?

A. He looked very downward, thinking shame of it, I thought.

Q. What part of the party was he in?

A. He was the hindmost man but one, and that was his own son.

JOHN BOYD—*sworn.*

Examined by Mr Serjeant Hullock.

Q. Where do you live?

A. In Strathaven.

Q. Do you know the prisoner at the bar, James Wilson?

A. Yes.

Q. How long have you known him?

A. From my infancy.

Q. He lives at Strathaven also?

A. Yes.

Q. How near do you reside to him?

A. Only the breadth of the street.

Q. Is your house opposite to his?

A. Yes.

Q. Have you an opportunity, from your house, of seeing any thing that is happening at Wilson's house, going out or coming in?

A. Yes.

Q. Do you remember Thursday the 6th of April last, in the morning?

A. Yes.

Q. You remember something happening at Strathaven?

A. Yes, I do.

Q. What time did you get up that morning yourself?

A. I do not exactly remember, it might be about seven o'clock,—six or seven.

Q. It might be between six and seven o'clock?

A. Yes.

Q. Was your attention attracted by any thing which was taking place at or about Wilson's house at the time you got up, or soon afterwards?

A. Nothing; only I saw one man whom I supposed had marched with the party that went next day; I saw him next morning when I opened the window, and I thought they had not gone off.

Q. What man do you allude to?

A. John Walters, the son-in-law to the prisoner—he was frequently going in and out there.

Q. Did you see him coming out of Wilson's house on the Thursday morning?

A. No; I saw him going in—I saw him almost every day.

Q. What time did you see him go in?

A. As soon as I opened the window I saw him on the street, but I did not see him go in exactly at that time—I was surprised at seeing him in the street.

Q. Did you see him soon after that, or at any time that morning, go into Wilson's house?

A. Yes.

Q. Did you see any other persons go in about that time?

A. I saw one man go in with him, but he was none of the party.

Q. Who did you see besides him go in?

A. I saw one man of the name of Peter Barr, a weaver.

Q. Did he go into Wilson's with Walters?

A. Yes.

Q. Do you know William Watson?

A. Yes.

Q. Did you see him that morning about Wilson's house or door?

A. Yes.

Q. What was he doing when you first saw him that morning?

A. I saw him going in the first time with a pole, I think, on his shoulder.

Q. Was that before or after Walters had gone in?

A. I think it was after that.

Q. You saw him go in, you think, with a pole upon his shoulder?

A. Yes.

Q. What was it like?

A. It was like what I took to be flag-staff.

Q. Was there a flag upon it?

A. Not at that time.

Q. Did you ever see a flag upon it at any other time?

A. I saw William Watson with a flag; I could not exactly be certain that that was the flag.

Q. How soon after his going in with the pole?

A. It was not long; it was some short time.

Q. Did he come out again then?

A. Yes.

Q. With this flag?

A. Yes.

Q. When he got to the door with the flag, how did he hold it, or what did he do with it?

A. He waved it.

Q. Was there any thing written upon the flag that you observed?

A. I only observed one side.

Q. What did that side contain?

A. "Strathaven Union Society, 1819."

Q. Did you observe the other side at all?

A. No; that was the side next me.

Q. When he came out and waved the flag, who were at the door besides himself?

A. There was only some boys that I recollect seeing in the street: I do not recollect of any person at the door but himself.

Q. He came out alone?

A. He stood at the door.

Q. And waved this flag?

A. Yes.

Q. Did any other persons come out of the house?

A. Some time after that.

Q. How soon might it be?

A. I cannot recollect; but a short time.

Q. Who came out a short time afterwards, do you recollect? Give us, in the first place, the number of the persons, and then we will inquire into the names.

A. I do not recollect the precise number.

Q. Whereabouts?

A. There might be about ten or a dozen—I do not recollect the identity to specify them all.

Q. You think there might be about ten or a dozen then?

A. Yes.

Q. They came out of Wilson's house?

A. Yes.

Q. Did Wilson come out along with them?

A. A little after; he came out last.

Q. Then all the persons, of whatever number they might consist, had proceeded out of Wilson's house before Wilson came?

A. Yes.

Q. He, therefore, was the last man that came out of the house?

A. Yes—I will not be certain.

Q. You think so?

A. Yes.

Q. Had they any weapons, or arms of any sort, when they came out?

A. Some had muskets, or what you call guns.

Q. Any other species or description of weapon that you observed?

A. Some pikes.

Q. Any thing else that you remember?

A. No.

Q. Had Wilson a gun and a pike?

A. He had neither a gun nor a pike.

Q. What had he?

A. It was the blade of an old sword, I thought.

Q. How did the people carry their muskets and pikes?

A. They carried them up by their side, I believe, the first three, but they were mostly over their shoulders, I think, as well as I recollect.

Q. Were the first persons who came out armed with pikes or muskets?

A. With guns.

Q. Do you remember how many guns there might be in the party?

A. No; there was a bustle of boys, and I could not see.

Q. You had, however, opportunity of seeing there were guns in the party?

A. Yes.

Q. Did they carry them on their shoulders, or in what way were they carried?

A. I think they carried, the first that I recollect, in this way, by their side, (*describing it.*)

Q. Obliquely?

A. Yes.

Q. Did they pass by where you were standing?

A. Yes.

Q. Did they come up together in a heap, or did they come in an array order—two and two?

A. They came in a sort of order—you may call it array; I cannot say whether two, or three, or four in a file—I cannot tell; I think there were three in the first file.

Q. And those three, you say, you think had guns?

A. Yes.

Q. Where was the person who carried the flag?

A. I do not precisely remember the station he had in the party.

Q. Are you sure that he marched off with them?

A. Yes.

Q. Did he precede or follow them, think you?

A. I do not recollect; he was in the middle, I think, of that party.

Q. However, you are quite positive he was amongst them?

A. Yes.

Q. And marched past you?

A. Yes.

Q. At that time where did Wilson the prisoner march?

A. He was in the rear.

Q. By being in the rear what do you mean?

A. He was the last.

Q. You told us before he issued the last from the house?

A. Yes.

Q. And he still continued the last?

A. Yes, when he passed me.

Q. What sort of time were they preserving—marching slowly or brisk time?

A. They were just in the ordinary walk or step.

Q. Was the step regularly kept, or was it just as men could get their feet to move?

A. I do not recollect that.

Q. But they preserved a sort of order.

A. I could not say whether it was military order or not.

Q. Just mention the names of such persons of the party as you were acquainted with—you did not know them all, probably—you have told us there was Watson, Walters, and Wilson?

A. There was John Morrison, William Howat, Robert Hamilton, William Robinson.

Q. Are all these persons Strathaven men?

A. Robinson is not a native there, but he has resided there some time, I cannot say how long it may be.

Q. He was residing there at that time?

A. Yes.

Q. And all the other persons were?

A. Yes.

Q. Were there several persons there whose names you do not know?

A. I think I would be acquainted with the whole of them.

Q. Were you so acquainted with them, or can you say you had that acquaintance with them as to say whether they were Strathaven men or not?

A. There were some of them that had not been long in the place, but they were in Strathaven at the time—at least there was one stranger, I did not know his name.

Q. There was one man who was a stranger to you?

A. Yes; if there was any more, it would be but one man.

Q. You remember one person in the party who was a stranger to you?

A. Yes.

Q. Had he arms, or had he not?

A. I am not quite certain as to what he had.

Q. You do not recollect to have seen him before that time, do you?

A. No.

Q. Was his name mentioned as they went past?—did you hear any thing said about him as he went by you?

A. Not as they went past, but I heard afterwards; I cannot speak positively to the man's name.

Q. Did you hear his name mentioned during that morning, whilst Wilson and those other persons were assembled in the way that you have mentioned?

A. Yes.

Q. I speak of the stranger?

A. Yes.

Q. When did you hear his name mentioned?

A. I do not recollect precisely—it was sometime in the course of the morning.

Q. Was it whilst Wilson and those other persons were assembled and marching in the way you have been describing?

A. No; I do not recollect any person speaking of him at the time they went past, but they spoke of him afterwards.

Q. Did you ever hear Wilson speak of that man?

A. Never.

Q. Did you ever hear him spoken of in his presence?

A. Never.

Q. You say they marched past where you were standing?

A. Yes.

Q. Along what road did they march—did they march towards this place?

A. They marched down a bye-road that leads to the Glasgow road.

Q. Did youlook after them—was your curiosity so far kept alive as to pursue them with your eye?

A. I went to an eminence soon afterwards, and saw their flag and party on the road.

Q. From that eminence had you a view of the Glasgow road?

A. Yes.

Q. How far can you see along that road?

A. More than a mile.

Q. Had they got upon that road when you saw them?

A. Yes.

Q. Did you see them marching along the road?

A. Yes; I saw the party marching along the road.

Q. Did you stay there till they were out of sight, or leave them marching?

A. No; I did not stay till they were out of sight.

Q. You saw the flag and the party marching along the road towards Glasgow?

A. Yes.

Q. How far is Strathaven from Glasgow?

A. Sixteen miles.

Q. Do you know a place they call Kilbride?

A. Yes.

Q. How far are you from Kilbride?

A. Eight miles.

Q. That is half way?

A. Yes.

Q. Does Kilbride lie in the direct route to Glasgow?

A. Yes.

Q. Had you seen Wilson the night before that?

A. No; I do not remember it.

Q. Did you observe any thing about his house the night before, do you remember?

A. No, I did not observe any thing extraordinary about his house; I was walking pretty late at night, and went into a neighbour's house, and staid about an hour.

Q. Do you know Mr Cowper of Coldstream?

A. Yes.

Q. How far is his house from your town?

A. Just about a mile.

Q. Whilst you were looking along the road, and observing the flag and the people marching with or after it, was Cowper's house within your view?

A. Yes.

Q. Did you see any persons go from the road towards Cowper's house?

A. No; I did not see the party after I was a little way from it—I was nearly a mile from it.

Q. Is there any place at Strathaven upon or against which they put up advertisements for things for sales, or roups, or whatever they are called?

A. Yes.

Q. What place is it?

A. The corners of streets, the fronts of merchants' shops, and the corners of churches.

Q. That is, the corners of public places, I suppose?

A. Just so.

Q. Do you remember whether about this time there were any papers upon those?

A. I heard of them about the time, but I never saw one.

Cross-examined by Mr Murray.

Q. You say you saw a party come out of Wilson's house?

A. Yes.

Q. Did you stay till they were gone?

A. I staid where I was then standing; they had but a few steps to pass me before they turned the corner of a house into a bye-road out of my sight till they got into the Glasgow road, which is but a short way.

Q. Did they turn off immediately after they came out, or did they wait any time?

A. They went instantly, to the best of my recollection; it was but a short space.

Q. Did they huzza, or make any noise?

A. Not when I was within hearing; some children were at times huzzaing—none of the party made any huzzaing that I remember.

Q. Then you went to the other part—that rising ground?

A. Yes.

Q. But they were gone?

A. Yes; I was a considerable distance from them when I was on the rising ground—I could not know one person from another there—I only saw a flag.

Q. You say the three first had guns—did you see any others with guns?

A. Yes.

Q. Whereabouts were they?

A. They were near to the latter end; one of them was detained by a woman speaking to him on the street, I remember, just for a minute or so—that was the time I remarked them.

Q. You observed three in front with guns, and others towards the end of the procession?

A. Yes.

Q. Then you went to this place?

A. Yes.

Q. How near were they to you?

A. A mile-stone is but a little space from where I left them, when they were furthest off, and I left them.

Q. How far were they off when you first saw them after they marched off?

A. They might be about a quarter of a mile—they would be scarcely that.

Q. Was there a hedge or a wall between you and them?

A. There were hedges, but I was higher than the hedges.

Q. Did you see them entirely, or merely their heads?

A. I saw just the flag and the procession moving along.

Q. Did you see them so as to distinguish the individuals?

A. No I did not.

Q. You saw Wilson come out?

A. Yes.

Q. How did he look?

A. Very down-cast-like, I think.

Q. Did the others look down-cast—the three men that came out first?

A. No

ANDREW ALSTON *sworn.*

Examined by Mr Drummond.

Q. Are you a shoe-maker in Strathaven?

A. Yes.

Q. Do you know the prisoner at the bar?

A. Yes.

Q. James Wilson?

A. Yes.

Q. Does he live near you in Strathaven?

A. Yes.

Q. How far does he live from your house?

A. Just the breadth of the street.

Q. Your house is on the opposite side of the street?

A. Yes.

Q. Is it directly opposite?

A. Yes.

Q. Do you remember, upon a Wednesday evening, in the beginning of April last, observing any thing particular about his house?

A. Yes.

Q. Was that the first Wednesday in April?

A. Yes.

Q. What time in the evening?

A. About ten o'clock.

Q. What did you observe?

A. I heard a great deal of noise.

Q. What sort of a noise?

A. People going out and in, and making a great noise in the street.

Q. Going out and in at his house?

A. Yes.

Q. And making a great noise in the street?

A. Yes.

Q. What sort of noise was it—speaking?

A. A great deal of speaking.

Q. Did you hear any other noise?

A. I heard some noise about the door, as if it had been splitting of wood, or something.

Q. How long did that noise continue?

A. It continued a good while, and then went away, and came back again.

Q. How long did it continue the first time?

A. About half an hour.

Q. Then it went away—that is, the noise ceased?

A. Yes.

Q. And did the people go away?

A. Yes, up the street.

Q. And you heard no more noise—for how long?

A. That was about twelve.

Q. What did you hear about that time?—did the people return again?

A. It appeared so, and I heard a great deal of noise opposite my window.

Q. And opposite Wilson's house?

A. Yes; they were coming out and in.

Q. Was that the same kind of noise you heard before?

A. Yes.

Q. Both the noise of the voices and the splitting of wood?

A. I did not hear no wood that time—nothing but voices.

Q. How long did it last then?

A. Perhaps twenty minutes, or a quarter of an hour.

Q. Did it appear to go away again?

A. Yes.

Q. When did they come again?

A. No more that night.

Q. Did you see Wilson the next morning about the door of his house?

A. Yes.

Q. About what time?

A. About a quarter after six.

Q. What was he doing?

A. Just standing at his own door—nothing else.

Q. Was there any body with him?

A. Nobody with him.

Q. Did you see any body go into his house in the morning?

A. After that I saw some go in?

Q. How long after that?

A. Half an hour, I saw one man go in.

Q. How did the man go in?

A. He just went in by the fore-door.

Q. Did you see any go in at the back-door?

A. Yes.

Q. How many?

A. Five or six.

Q. Had they any thing with them?

A. Yes, they had arms—guns and pikes, and those sort of things; they appeared to be all armed.

Q. What sort of place is the back-door—how do you get to it?

A. You come down through a garden, and through a church-yard, and down by a ladder.

Q. Is that the only way to get to that?

A. Yes—the way they came to it; there is another road to it.

Q. They all went into Wilson's house?

A. Yes.

Q. Did you know any of those men?

A. I knew some of them—some I did not know.

Q. Tell us the names of those you knew?

A I knew Robinson.

Q. Was he a Strathaven man?

A. He is not a native—he has been stopping there some time.

Q. Any body else?

A. Robert Howat.

Q. Any more?

A. Yes—Robert Hamilton.

Q. They are Strathaven men?

A. Yes.

Q. Any more?

A. No, I do not recollect at present any more.

Q. Did you see Morrison there?

A. Yes.

Q. He was one of the pike people?

A. Either a pike or a gun, I do not recollect which.

Q. Did you see any people marching out of the town that morning?

A. Yes.

Q. When?

A. A little after nine o'clock.

Q. Which way were they marching?

A. They were going the Glasgow-road.

Q. How many of them might there be?

A. There were fourteen, I think.

Q. Had they any thing carrying?

A. Yes; they had all arms carrying.

Q. What sort of arms?

A. Some had guns.

Q. The same kind of arms that the men had in going into Wilson's house?

A. Yes.

Q. Did you know any of them?

A. Yes; Robinson was there, and one Stevenson, and one Watson had a flag carrying.

Q. What sort of a flag?

A. It was a whitish-coloured flag—I did not see what was on it.

Q. Upon a pole?

A. Yes.

Q. Was Morrison there?

A. Yes.

Q. The same Morrison that came out of Wilson's?

A. Yes, the same.

Q. Can you mention any more names?

A. There was one Russel, and two lads of the name of Steel.

Q. Do you remember the first names of any of them?

A. One of them was Andrew, and the other William.

Q. And they were Strathaven men?

A. Yes.

Q. What was Russel's first name?

A. James, I think.

Q. Is he a young man, or an old one?

A. A young man.

Q. Is there an older man of the same name there?

A. Yes; there is a person who lives at Strathaven of that name, but he was not there.

Lord President.—Did you see the prisoner marching with that party?

A. Yes.

Q. Was he armed?

A. He had the appearance of a sword in his hand—in his right hand carrying.

Q. Whereabouts in the march was he—at the head, or in the rear?

A. He was in the rear.

Cross-examined by Mr Murray.

Q. You say you saw Wilson carrying a sword—how was he carrying it?

A. He was carrying it in his hand, in this way (*describing it,*) I saw just the point of it; I was on the opposite side to him.

Q. Was it an old sword?

A. There appeared to be a little rust on the top of it.

Lord President.—The point of the sword was uppermost?

A. Yes.

Q. Was it drawn?

A. Yes.

Mr Murray.—Did you see so much of the sword as to know whether there was a sheath on it or not?

A. No, I did not.

Q. You only saw the point?

A. No; I did not see the handle, or any thing of that.

Q. Do you know whether Wilson burns wood for his fire?

A. Sometimes I have been in his house, and seen him burning wood.

JAMES FALLOW—*sworn.*

Examined by Mr Serjeant Hullock.

Q. Where do you live?

A. In Strathaven.

Q. Do you live with your father there?

A. Yes.

Q. Were you at home on the 5th of April last, on a Wednesday?—do you remember the night before the morning?

A. I do not remember the day of the month—it was the night before the morning.

Q. Was the day Wednesday?

A. Yes.

Q. Do you remember being in a street called Peperrow?

A. Yes.

Q. Do you remember being there about ten or eleven o'clock on Wednesday night?

A. Yes.

Q. Along with whom?

A. A radical party, as we called them.

Q. Who were you with?—was a person of the name of Dicks with you?

A. Yes—John Dicks.

Q. Were you walking along the street?

A. Yes.

Q. Did you see any other party or set of people in the street?

A. No.

Q. Did you hear any person?

A. Yes.

Q. What did you hear first?

A. We first heard a stamping of feet coming up the street.

Q. Did you look about?

A. We were coming against them.

Q. Did you meet them?

A. No, we stopped; my father's door was between me and them.

Q. Did you and Dicks go into your father's house at that time?

A. We went in at the outer door.

Q. And did you stop there?

A. Yes.

Q. What did the persons or party do, whose feet were stamping in the way that you have been mentioning?

A. They came to the door and asked if there were any person in this house. Some of them said there was James Fallow here.

Q. How many persons came to the door, do you remember?

A. There were two came in.

Q. Did you know any of the persons that came there?

A. Yes; I knew one of them.

Q. Tell us his name?

A. John Walters.

Q. John Walters was amongst them?

A. Yes.

Q. Is John Walters any relation, by marriage, to James Wilson?

A. Yes, I believe he is his god-son, his son-in-law.

Q. When these people came up to the house, was any thing said? did you hear any word given of any sort?

A. Yes, it was before they came to our door; it was some doors further down the street; I heard the word "halt."

Q. Upon hearing that word "halt," did the persons composing the party halt?

A. Yes.

Q. What sort of voice was the word "halt" given in? was it loud?

A. Yes, in a firm tone of voice.

Q. You did not know the voice, did you?

A. No; I could not say.

Q. How many persons might there be in the party?

A. I could not exactly state the number.

Q. You can say probably whether there were five, or six, or thirty?

A. I think there might be upwards of twenty, or thereabouts, I could not say how many.

Q. You think there might be about twenty?

A. Yes; or perhaps upwards.

Q. Had they arms of any sort that you could perceive?

A. Yes.

Q. What sort?

A. I seed some pikes and some guns.

Q. What had Walters?

A. He had a pike.

Q. Had the whole party, no matter what the number was, pikes and guns?

A. No; I saw some there that had nothing.

Q. Had the greater portion of them pikes or guns?

A. Yes; I believe they had.

Q. Do you know William Howat?

A. Yes.

Q. Do you know a man of the name of Stevenson?

A. Yes.

Q. Were they there?

A. Yes.

Q. Both Howat and Stevenson?

A. Yes.

Q. Do you know Watson?

A. Yes.

Q. Do you know Morrison?

A. Yes.

Q. Were they of this party?

A. Yes.

Q. Had the persons whose names you have just mentioned, Morrison, Watson, Howat, Stevenson, Walters—Walters you say had a pike?

A. Yes.

Q. Had the other four pikes, or what?

A. Some had pikes, and the others had guns.

Q. They were all armed with something, then?

A. Yes, I thought so.

Q. You retired, you say, within your father's door?

A. Yes.

Q. And two of the party came up to the door?

A. Yes.

Q. Do you know the names of either of those two?

A. John Walters was one.

Q. What did they say to you when they came up?

A. When they came up to the door we clapped on the stair.

Q. Did you sit down, or lie down all your length?

A. We lay down all our length, and they observed us—the men who were there.

Q. Which was the spokesman?

A. John Walters.

Q. What answer did you and the other man give?

A. I did not speak to him; he demanded again in a firmer tone of voice, who was there? and I answered it was me,—what did they want?

Q. He knew you?

A. Yes.

Q. What did he say to you then?

A. He told me it was me he wanted.

Mr Murray.—My Lord, I did not stop this at first, but I submit that a conversation going on, and words said, when it is not alleged that Wilson was present or within hearing, is not competent evidence. My Lord, I certainly am very unwilling to take up your Lordship's time with that; but I submit, that where the party against whom the accusation is brought is not present, a conversation taking place cannot bind him in the smallest degree. I do not know what was said, nor have I any means of ascertaining; but I submit here, if you allow evidence of that kind, you put it in the power of any person to criminate another—this takes place on the night before—on the night before it is said that this person went to the house of the witness, and Walters and others went; and repeated questions have been asked as to the conversations between the witness and Walters; is that to criminate my client? I do not mean to say it will criminate my client; I have no reason to suppose it will; but I apprehend it is against the rules of law, which say, that any thing said when the prisoner is not present, is not to be brought in evidence.

Lord President.—Unless they can connect him with the conspiracy; but unless a conspiracy is proved, it is in vain to attempt to prove this prisoner was one of that conspiracy; what passed in the absence of the prisoner cannot attach him; but it is part of the whole general procedure, at which this man at the bar was more or less present at different times.

Mr Murray.—I would not object to evidence of what took

place, but it is to evidence of conversation that I submit cannot be received.

Lord President.—Those words spoken by Walters are not words spoken by Wilson, but it is part of what took place; a conversation is a fact as much as any thing else.

Mr Murray.—I have always understood there was a distinction drawn between mere facts and a conversation carried on; perhaps I am entirely wrong; but in any little thing I have seen, I have seen a distinction of that kind; there is some such distinction drawn, and I leave it to the Court to dispose of it. I am merely anxious to know the law on the subject; there is a distinction between conversation and the words criminating another, and between evidence of the *res gesta.*

Lord Chief Baron Shepherd.—There is a distinction in many cases, if the conversation which is about to be proved does not amount to an act in the progress of the transaction; now here, on the Thurday morning, this person, the man whose conversation we are about to examine into, is found in company with Wilson, in pursuit of some common design—the evidence which they are about to give now, is a conversation with some of the persons with whom the prisoner was, on Thursday morning, in pursuit of some object; and that conversation the night before takes place, from one of those persons, under circumstances manifesting some design of the same sort. Nothing can be clearer than that that is evidence; and there is the strongest authority for it. In a most important case,—when Despard's case was tried for Treason, which was to kill the King, the first set of witnesses called proved him with John Francis, who was not tried with him; they proved him and Francis, and divers other persons, on the 16th of December at a given place, to convey arms, where they were all taken up under very suspicious circumstances, but not under circumstances of that kind that warranted the Court in submitting that evidence to the consideration of the Jury. As soon as they had done that by several witnesses, they called Thomas Windsor, and several other witnesses, to prove conversations with John Francis

four months before Colonel Despard appeared in the transaction. It is true, no objection was taken there; but when we recollect who were the Judges who tried that case, and when I recollect the Counsel for the prisoner, who was as fertile in starting objections for the prisoners as any man at the bar, Mr Serjeant Best, it is important that the whole evidence was pursued without objection; and there certainly was not a doubt on the minds of any of the Judges or the Counsel, but that that was completely evidence, not because there is not in many cases distinctions between acts and conversations, but on this principle—if you give sufficient evidence to send to the Jury of a conspiracy, then any conversation which takes place under such circumstances, is evidence to be considered by the Jury, whether it makes out the same purpose and the same sort of transaction; these conversations are as much evidence as the acts of the conspirators done at separate and distinct times. I have always conceived that to be the law; and the case of Despard is an important authority, and nobody ever doubted it; and it is clear, without a great deal of evidence, there would not have been a case strong enough for a Jury to consider.

Mr Serjeant Hullock.—The same line of proceeding was adopted the other day, after having laid the foundation which has been pointed out.—You were just telling us that he repeated his inquiry of who were you, and you said "It is I, what do you want?"

A. Yes.

Q. What did he say to that?

A. He said, "It is you we want,"—says I, "What do you want?"—says he, "You must go with us,"—says I, "I cannot go with you,"—says he, "You must go walk, walk immediately."

Q. Did he do any thing when he said that?

A. No.

Q. What did you do in consequence of that—did you get up?

A. I was sitting then.

Q. Did you go with him, or did you not?

A. I stepped out to the door, and I was in a terror at the

time, so I saw there was no resisting them, and a guard was placed behind me.

Q. Did you go freely, or from that terror which you have just now mentioned?

A. I went from terror.

Q. When you got out, what sort of guard was it that was placed behind you?

A. It consisted of two or three men, I could not say who they were.

Q. Did you know any of them?

A. No, not at that time.

Q. Had they arms, that you could perceive?

A. Yes; I seed some arms about them.

Q. What had they?

A. Some of them pikes, and some of them guns; I seed no other arms, as I recollect.

Q. Did you go along with the party then?

A. Yes, I was marched along with the party

Q. Were there people before you and people behind you?

A. Yes.

Q. You were in the centre?

A. Yes.

Q. Had you a right-hand man, or a left-hand man?

A. I had both.

Q. You had a person to the right and left of you, and before you and in the rear of you?

A. Yes.

Q. Had they all arms of some sort or other?

A. I could not see whether all of them had, but many of them.

Q. When you went off, was the word "march" given?

A. I do not recollect any thing of that kind.

Q. How many might the whole party be composed of I do not mean those that were employed in guarding you, but in the whole party?

A. I could not exactly say; I think there would be upwards of twenty.

Q. Where were you marched to?

A. I marched to William Louden's, that was the next door, I believe, that was taken on their way.

Q. How far is William Louden's house from your father's?

A. Perhaps twenty yards.

Q. When they came to Louden's house, what did they do there?

A. They rapped at the door and demanded admittance, and William came to the door and opened it himself; and they asked for a man there.

Q. What did he say to that?

A. He said they had no man, or something to that purpose, but their own family; I cannot remember the words, but it was to that purpose.

Q. What then? Did they go away when he told them there was only himself?

A. Yes, they went away.

Q. Is William Louden a young man, or an old man?

A. He may be a man perhaps about sixty, I suppose.

Q. Upon his saying there were none but his own family they went away?

A. Yes.

Q. Did you go to any other house?

A. Yes.

Q. Whose house next?

A. The house of Thomas Allen of Flemington.

Q. How far is that from Strathaven?

A. That is about a stone's cast, or so.

Q. What time of night might this be?

A. I cannot exactly say, the distance was very short.

Q. When was it you were first brought into action?

A. Near about eleven o'clock.

Q. When you got to Allen's, what did they do? Did they knock at his door, or get him out, or what did they do?

A. I could not see what they did, it is up a stair, out of the street, but they brought a gun from that house.

Q. Did you see any of your party enter that house?

A. Yes, I saw several go up into the door.

Q. Did you see them return again?

A. Yes.

Q. Had they any thing with them when they came back?

A. Yes, they brought out a gun.

Q. You did not hear any conversation that passed at Allen's house, or about the house?

A. No; not that I recollect.

Q. You say they brought out a gun?

A. Yes.

Q. Are you sure that the gun that they brought out was one that they did not take in with them?

A. I heard them say, when they came out of the door, that they had got his gun.

Q. After having done this, did you leave Allen's house and go to some other house?

A. Yes.

Q. Whose house might be the next object of your visit?

A. Thomas Alexander's house.

Q. What did they do when they got there; did they knock at the door, or go in without knocking?

A. They knocked both at the door and window, I believe.

Q. Did the persons in the inside answer the knocking? did they come out, any of them?

A. They did not seem to be in a hurry to come out, but they came out at length.

Q. Did they, in consequence of that, repeat the knocking at the door and window?

A. Yes, they did.

Q. Did they say any thing at the same time?

A. Yes, they uttered a considerable deal of threatening language.

Q. You cannot tell us what it was, or any part of it?

A. No, not much of it; I minded that they threatened to fire in at the window, if they would not open the door.

Q. Did they say that aloud?

A. Yes.

Q. Was that said by one person, or by more than one person?

A. There was only one person that I recollect of.

Q. Do you recollect his name?

A. I cannot be quite certain.

Q. In consequence of that they did come at last—who came at last?

A. It was James Alexander, son of Thomas Alexander.

Q. What did he do when he came? Did he give them any thing?

A. Yes; he told them to stand back, and he would hand out the gun to them.

Q. Where was he; at the door, or at the window?

A. He was at the door.

Q. Did you see him in fact hand out a gun to them?

A. Yes.

Q. He delivered it to them, did he?

A. Yes.

Q. Did they take it away with them when they left that house?

A. Yes.

Q. Then this was the second gun you procured?

A. Yes.

Q. One from Allen, and the other from Alexander?

A. Yes.

Q. Do you know Mr John Scott?

A. Yes.

Q. Did you go to his house?

A. Yes.

Q. How near does he live to Mr Alexander?

A. It is a good distance from that.

Q. What do you call a good distance—half a mile?

A. Nearly a quarter, I think, perhaps scarcely that, but it is near upon.

Q. Does it lay on the road?

A. On the Glasgow road.

Q. Does Alexander's house lay on the same road?

A. No, on the Hamilton road.

Q. You crossed, then, from Alexander's house to Scott's?

A. Yes.

Q. How did you get there?

A. We came the road to it.

Q. Tell us what took place when you got to Scott's house?

A. He knocked at the door; or, I believe, they went in, the door was not shut, and they demanded John Scott, James's son.

Q. Was this James Scott's house you went to?

A. Yes.

Q. What happened then; did he come out; or what took place?

A. He came out, and had some conversation with them; what it was I could not say, and his mother was making a great noise within the house, and they allowed him to turn back.

Q. What sort of a noise was it?

A. She was screaming and crying.

Q. Did she make a great noise?

A. A very great noise.

Q. Was it the noise and the shouting of a woman who was alarmed and in distress.

A. Yes.

Q. What became of you after leaving that house?

A. We went next to the house of John Collins, I think?

Q. How far does he reside from this place of Scott's?

A. It is like two doors between the two.

Q. What did you do when you got to Collins' house?

A. They demanded admittance there, and knocked at the door, and they asked for John Collins, and they opened the door, after a considerable time, and got into the house, and I heard but little of the conversation there.

Q Did Collins go with them, or did he not?

A. No, I never seed him.

Q. What became of him you cannot tell?

A. I cannot tell.

Q. Did you hear any noise or discussion in the house upon the subject?

A. I heard one word repeated just; and it was, I will not flinch.

Q. You heard somebody say, " I will not flinch?"

A. Yes.

Q. Do you know who it was?

A. I thought it was Collins; but, however, I cannot be very certain.

Q. He did not go with you?

A. No; I never seed him.

Q. When you left Collins' house, did the party divide or continue together?

A. They divided.

Q. Do you mean into two parties, or two sets?

A. They sent a detachment up to High Ball-Green, to search for men and arms there; this was Lower Ball-Green.

Q. Who gave the orders when that detachment was sent?

A. I cannot recollect.

Q. What did they say at that time?

A He told them to go and see what they could find at High Ball-Green, while they remained there, or something to that effect.

Q. Did they say what they were to get if they could?

A. I do not recollect if that was exactly mentioned.

Q. How many persons separated from you at that time?

A. I could not say.

Q. About how many?

A. I think there might be about ten, or a dozen, or so.

Q. You think there might be about ten who obeyed those directions?

A. I think so.

Q. Or at least went away for that purpose?

A. Yes.

Q. After they had separated, did they join you again; and how long was it before they came back?

A. I could not say how long it might be; it was a very short time; perhaps ten minutes or so.

Q. Did they make a report in what way they had succeeded?

A. I remember them saying something about that, but I really forget.

Q. They did say something?

A. Yes; I remember them speaking something about it.

Q. What became of you after this—did you get away soon after that?

A. I was not long after that.

Q. Did you go to any other place before you got yourself separated?

A. Yes, they marched next to the house of William Simmington.

Q. What did you do there?

A. They rapped at the door, and asked for William, if he was in; and he came to the back door, and answered them he was; they asked him if he was coming out, and he said not to-night.

Q. What more took place?

A. He said he would see them to-morrow morning. I believe they used some threatening language to him before that.

Q. What did he do then—did he come out, or did he not?

A. No, I never seed him come out; I believe he did not.

Q. Did they get any thing at that house, that you knew of?

A. No; not that I seed.

Q. Did they get to any other place, or talk about any other place after this?

A. They were talking about attacking Mr John Cochrane's shop.

Q. What is Mr Cochrane? what sort of shop does he keep?

A. He keeps most kind of goods; in the hardware line mostly.

Q. Were you ever in his shop?

A. I have been often in his shop.

Q. Does he sell all sorts of things almost?

A. Almost all things.

Q. Does he sell gunpowder and shot?

A. Yes, he usually does that.

Q. Does he sell gun-flints think you?

A. I do not know; I believe he does.

Q. You say they talked about attacking John Cochrane's

shop—what did they say about that shop, and about attacking it?

A. I heard them talking about eighteen guns that they thought they would get at Cochrane's shop.

Q. Did they go to Cochrane's shop that you know of?

A. I could not say.

Q. What became of you?

A. At the time that they were at Simmington's door, before any of the party were marching, I suppose for Mr Cochrane's, which was the next door, or the next again, and I stepped aside to make water there, and I thought it was a proper time to make my escape, and run off.

Q. Did you run off?

A. Yes, I ran off.

Q. Did you succeed in your attempt?

A. At the time that I was making my water, they placed a man with a pike and a gun over me.

Q. You made water first, did you?

A. Yes.

Q. At that time there were two men, one with a gun, and another with a pike, placed over you?

A. Yes.

Q. Did they tell you for what purpose they were placed there?

A. No, they just halted with me.

Q. You dropped in the rear?

A. No, I just stepped aside.

Q. And two men stepped aside with you?

A. Yes.

Q. How did you get away?

A. I gave one of them a shove, the one that had the gun, he was between me and the road I was going to take, and I gave him a shove, and put my heels to it and ran.

Q. Did you get off?

A. I got off.

Q. Did you take the earliest opportunity of getting off? did you get off from this party as soon as you could?

A. Yes, as soon as I durst attempt it.

Q. During the time you were with them, did you continue with them from apprehension or from terror?

A. It was from terror.

Cross-examined by Mr Murray.

Q. How long did you continue with this party that night?

A. I could not exactly say.

Q. Might it be an hour, or two hours?

A. I think it might be nearly an hour, but I could not in fact say.

Q. Not much more than an hour?

A. About an hour, I think.

Q. Was it an hour and a half?

A. I should scarcely think it.

Q. I did not exactly follow what you said about the people guarding you, did you say there were two people guarded you, or more?

Lord President.—At what time do you mean?

Mr Murray.—I mean to take the whole time.

Lord President.—He has told you already they guarded him in a different manner when they first took him.

Mr Murray.—I did not understand that. When you first went out, how many guarded you?

A. I could not state the number.

Q. Were there two or three?

A. There were more than that.

Q. Immediately about you, guarding you?

A. Yes, after I went out at the door.

Q. After you went out at the door, did the whole people guard you?

A. No; I was amongst the whole of the party.

Q. Were there three, four, or five?

A. I could not state the number.

Q. You cannot state whether there were three, four, or five, or any other number?

A. There were a considerable number round me; I was in great terror at the time.

Q. You were in so great a terror you do not recollect distinctly the number?

A. No.

Q. Was it dark when you came out?

A. Yes, very dark.

Q. About what time did you say it was?

A. I think it was about ten or eleven o'clock.

Q. So that it was about twelve when you came away?

A. Yes, I think it would be nearly so; indeed for the the time I will not take upon me to say exactly.

Q. There were a good many about you at first, what took place in guarding you afterwards?

A. There was sometimes more and sometimes less.

Q. Did they seem to relax in guarding you?

A. No; there was always some in the rear and some in the front of the party.

Q. And when you at last escaped, there were two people guarding you?

A. Yes.

Q. And one had a pike and another a gun?

A. Yes.

Q. Was it so dark they could not see you at any distance?

A. Yes, it was uncommonly dark.

Q. How far off could you see a person that night.

A. I cannot say.

Q. It was a very dark wet night?

A. Yes.

Q. Do you know Wilson, the prisoner at the bar?

A. Yes.

Q. Did you see him there?

A. No, I did not.

Q. Do you know him perfectly well?

A. Yes.

Q. If he had been there should you have distinguished him do you think in the course of an hour?

A. I think I might have seen him perhaps.

Q. You did not see him?

A. No, I did not see him.

WILLIAM LOUDON—*sworn.*

Examined by Mr Hope.

Q. Where do you live?

A. At Strathaven.

Q. In what parish is Strathaven?

A. In the parish of Avendale.

Q. Were you there in the beginning of April last?

A. Yes.

Q. On Wednesday the 5th.

A. Yes.

Q. Do you recollect any thing occurring upon that night, while you were in your own house?

A. Yes; there were a parcel of armed men on the street.

Q. Did they come towards your house, or did they pass your house?

A. Yes; they knocked at my door.

Q. Did they say any thing? and tell us what took place?

A. They desired me to open the door twice, and I did not open it.

Q. How was that said? in a quiet civil way?

A. They asked me to open the door civil enough; they asked me to open the door, and I said, "Who is there?" and they cried, "Open."

Q. Did you open the door?

A. Yes.

Q. Did you see any persons?

A. Yes; I opened the door; I saw a man with a gun—he came on the step of the door, and ordered me to send out that man—I told him we had no man in the house but ourselves.

Q. Did he name this man that he wanted?

A. No; he said the second time, in a more stern way, "Send out that man;" and I said, "We have no man but ourselves" again.

Q. Do you know who that man was that stood on the step of your door with a gun?

A. Yes.

Q. What is his name?

A. Peter Macallum.

Q. Where does he live?

A. He was at that time working at Flemington—he had not been long in the neighbourhood of Strathaven.

Q. Is Flemington near Strathaven?

A. Yes, within a quarter of a mile.

Q. Where did he come from?

A. From Kilsyth.

Q. Did you see any other men?

A. No, there were some of the rest in the street told him to come away.

Q. Did you see those men?

A. No; I only heard one of them say, "Come away;" it was a very dark night.

Q. Do you know what number there were?

A. No.

Q. Did you hear the noise of many people walking?

A. Yes; it was a very dark and a very wet night, and I could not have any idea how many people; there seemed to be a considerable number, by the clashing of feet upon the pavement.

JAMES ALEXANDER—*sworn.*

Examined by Mr Solicitor-General.

Q. Do you live with your father?

A. Yes.

Q. Where does he live?

A. In Flemington.

Q. Is that near to Strathaven?

A. Yes, it is within a quarter of a mile, I think, of the cross of Strathaven.

Q. Do you recollect any body coming to your father's house in the beginning of April last, on a Wednesday?

A. There was a multitude came, but I knew none of them.

Q. Was it in the evening of that Wednesday?

A. Yes.

Q. At what time of night?

A. About eleven o'clock.

Q. What did this multitude do when they came to your father's door?

A. They came on the door and made a great noise, and from the door they went to the window; and by this time I had to rise, and I *axed* them what they wanted, and they *axed* a gun from me; and I said, that if they would stand all back from the door till such time as I would open it, and molest the house none, I would give it them quietly.

Q. Did you give them a gun?

A. Yes, I opened the door, and gave it them out of my own hand.

Q. You came to the door yourself?

A. Yes.

Q. Did you look out?

A. Yes, I looked out, but the men immediately had obeyed my orders, and stood to the opposite side of the road, except the one that took the gun, and another that was upon the contrary hand.

Q. Did you look out?

A. Yes, I looked out.

Q. How many people did you see?

A. I am sure I could not say to their amount, but I took it to the number that it thought to be—between thirty and forty to look at.

Q. When they came to your father's door, did they make much noise?

A. Yes, they made a great deal of noise.

Q. Did you hear any gun fired?

A. Yes, there was a gun fired.

Q. At the door or window?

A. Just opposite the window.

Q. Did you see the flash?

A. Yes, I was just rising out of my bed when the gun was fired.

Q. Were any of the people armed?

A. The most of them had something in their hands, but I know not what it was.

Q. What did it look like?

A. Some of them had the appearance of long poles, and others shorter like.

Q. Have you seen pikes occasionally?

A. I never *seed* any pikes, except that they resembled some drawn on paper.

Q. Long poles there were?

A. Yes.

Q. And some others had something shorter?

A. Yes.

Q. It was very dark, was it?

A. Yes, it was very dark.

Q. You could not see whether it was muskets?

A. No, I could not.

Q. Or the points of pikes?

A. Yes.

Q. They took away the gun, did they?

A. Yes.

Q. Did you hear or see any thing more?

A. When they went away they promised to return the gun, and they immediately passed the door, and turned directly, and went down the road, and ordered me to shut the door.

Q. When they promised to return the gun, what did they say?

A. They said they would return it, but not when, nor where, nor nothing about it.

Cross-examined by Mr Murray.

Q. When was this gun fired?

A. It was fired, I think, about eleven o'clock, to the best of my recollection.

JOHN COCHRANE, *the elder—sworn.*

Examined by the Lord Advocate.

Q. You are a merchant in Strathaven, are not you?

A. Yes.

Q. You live there?

A. Yes.

Q. Were you at home on the night of Wednesday the 5th of April last?

A. Yes.

Q. Were you disturbed by any body coming near your house that night?

A. I was.

Q. Were you in bed?

A. Yes.

Q. What time of night might it be?

A. It was near twelve—within a quarter of an hour.

Q. What did you hear?

A. I heard a noise of people.

Q. Did you hear any thing else?

A. A knocking at the door.

Q. Before that, did you hear any word given?

A. I heard before they came forward, something like "Stop!"

Q. Was that the word?

A. That was the word, as far as I recollect.

Q. Did you hear any sound besides that?

A. No; I do not recollect it.

Q. Nothing like the sound of arms?

A. I heard a sound of something.

Q. What did you think it was at the time?

A. I think I said to my wife, "I think there be radicals now."

Q. Why did you say that to your wife?

Mr Murray.—That is his reason.

Lord Advocate.—And therefore it is still more likely to be evidence—Why did you say that to your wife?

A. I had heard her speak about that for some time past.

Q. Was it any thing you heard at that time that made you express yourself in that way?

Mr Murray.—This is a private conversation between him and his wife, where none of the conspirators are present.

Lord President.—There were people at the door.

Mr Solicitor-General.—We do not insist upon it.

Lord Chief Baron Sheppard.—It only shews the impression on his mind at the time.

Mr Murray.—I have no objection to that; but I object to the conversation with his wife.

Lord Advocate.—Was there any thing that passed at that moment, that led you to make that observation to your wife?

A. I have said as much as I can say upon that point.

Q. Did they knock at your door?

A. Yes.

Q. Did you rise?

A. Yes.

Q. At first?

A. Not at first.

Q. Did the knocking continue?

A. Yes.

Q. Did it become more violent?

A. Yes.

Q. Did they call upon you by name from the outside?

A. Yes.

Q. Did they threaten to break open your door if you would not open it?

A. They did.

Q. Did they say what they wanted—whether it was you or any thing else?

A. They wanted goods in my shop.

Q. Did you at last open the door?

A. Yes.

Q. Did they come in?

A. Yes.

Q. How many people did you see?

A. Four, I think.

Q. Had you a candle with you?

A. Yes; I took down a candle with me into the shop.

Q. Did you know any of the four men?

A. No.

Q. You are certain?

A. No; I did not know them at the time.

Q. Did you know them afterwards?

A. No; I have never seen one of them since.

Q. This was an outer door they came in at first—did they demand access to your shop?

A. Yes.

Q. And you admitted them, did you?

A. Yes.

Q. What did they ask for after they got into your inner shop?

A. They asked for fire-arms, powder, and lead.

Q. What did you say to them in answer?

A. I do not recollect.

Q. Did they get any arms?

A. Yes.

Q. Of what description?

A. One gun or musket.

Q. Was that the only gun in your shop?

A. Yes.

Q. Did they express themselves disappointed at only getting one gun—did they say they expected more?

A. Yes.

Q. How many did they say they expected?

A. They expected sixteen.

Q. Did they get any powder?

A. Yes.

Q. How much?

A. Seven pounds.

Q. Did they ask you to shew them any lead—or did you shew them any?

A. I shewed them some lead shot, but it was not what suited them.

Q. What did they say?

A. It did not suit them.

Q. They said so?

A. Yes.

Q. What sort of lead was it?

A. Lead shot.

Q. Small shot?

A. Small shot.

Q. Did they look at any other lead you had?

A. They might—I do not recollect it.

Q. Had you other lead?

A. Yes.

Q. Of what description?

A. Some shot lead—but that was not kept in the shop—it was kept in a back court.

Q. Did they ask you if you had any flints?

A. Yes.

Q. Did they get any flints?

A. They got a few.

Q. How many?

A. About a dozen or fourteen.

Q. Did you mark down the articles that you gave these people?

A. Yes.

Q. At the time?

A. Yes.

Q. Do you remember their value?

A. £2, 7s. 6d., I think.

Q. Exclusive of the gun?

A. No; including the gun.

Q. Did you give these things to these people voluntarily, or in consequence of force and fear?

A. It was not voluntarily.

Q. Did you see how many people were outside of the house?

A. I saw a number—from twenty to thirty, I thought.

Q. Did those that were in the inside occasionally communicate to those without?

A. They might—I do not recollect particularly with regard to that.

Q. Were those persons you saw, armed, or unarmed?

A. They had no arms, as I saw.

Q. Neither withinside the door, nor without?

A. The outside it was very dark and very wet, and I could not see—they seemed to have something carrying.

Q. Did they say anything to you about the payment for these articles?

A. Yes; I was to put them down to the radical account, and I would be paid for them.

Q. Did they say by whom?

A. No.

Q. How long might they be in your house altogether?

A. About half an hour.

Q. Do you know a man of the name of William Howat?

A. Yes.

Q. Can you say whether he was one of the four?

A. No; I could not say at the time.

Q. Could you say since?

A. No; I have not seen him since.

Mr Murray.—If I understood you right, you said that the four people in your house were not armed, and that you could not distinguish whether those without were armed, but they appeared to be carrying something?

A. Yes.

JOHN COCHRANE, *the younger—sworn.*

Examined by Mr Solicitor-General.

Q. Do you live with your father?

A. Yes.

Q. He is a shopkeeper in Strathaven?

A. Yes.

Q. And sells all kinds of hardware?

A. Yes.

Q. Do you recollect, in the beginning of April last, in the course of the evening, some people coming to your father's house?

A. Yes.

Q. Was that upon a Wednesday?

A. Yes.
Q. About what time of night was it?
A. About twelve o'clock.
Q. Did many people come to your father's house?
A. Between twenty and thirty.
Q. What did they do?
A. They knocked at the door.
Q. Did anybody come in?
A. They knocked awhile, and they came in.
Q. Who opened the door?
A. My father.
Q. How many people came in?
A. Four came into the shop.
Q. Did they get any thing from your father?
A. Yes; they got a gun.
Q. Did they get anything else?
A. Some powder, and a dozen flints.
Q. Was it gunpowder?
A. Yes.
Q. Were you present when that was done?
A. Yes.
Q. You saw them get the gun?
A. I did not see them get the gun.
Q. Did you see them get any thing else?
A. I saw them get the powder and flints.
Q. Did you see the gun in anybody's hands afterwards?
A. Yes.
Q. Was that in the shop?
A. Yes.
Q. Whose hand was it in when you saw it?
A. In Howat's.
Q. You know him?
A. Yes.
Q. Did they go away after this?
A. Yes.
Q. They carried away the gun?
A. Yes.
Q. What is Howat's christian name, do you know?
A. Robert.

Q. Did you look out?

A. No.

Q. You did not see any thing out of doors, did you?

A. No.

Q. They went away?

A. Yes.

Q. And you saw no more of them?

A. I saw no more of them till next day

Q. What did you see next day?

A. I saw them going away.

Q. Where from—whereabouts were they?

A. About the relief church in Strathaven.

Q. How many people might you see there?

A. About twelve or thirteen—I could not exactly say.

Q. At what time of the day was this?

A. About nine.

Q. About nine in the morning?

A. Yes.

Q. What had these people with them when they went away?

A. Guns and pikes.

Q. Had they all guns and pikes?

A. Yes.

Q. Was there a flag with them?

A. Yes.

Q. Do you know who carried the flag?

A. William Watson.

Q. Did you know any body else among those?

A. Yes.

Q. Mention their names?

A. Robert Howat, James Wilson.

Q. Is that the man? (*pointing to the prisoner.*)

A. Yes.

Prisoner. Me?

A. Yes.

Q. Are you sure of that?

A. Yes.

Mr Solicitor-General.—Who more?

A. I do not recollect any more.

Q. Do you know a man of the name of Walters, a shoemaker?

A. Yes; I saw him.

Q. Was he there?

A. Yes.

Q. Had he a gun, or a pike, or any thing?

A. A pike.

Q. Do you know a man of the name of William Robinson?

A. Yes.

Q. He was there?

A. Yes.

Q. Do you know a man of the name of William Morrison?

A. No.

Q. Do you know a man of the name of Stevenson?

A. Yes.

Q. Was he among them?

A. Yes.

Q. Where did they go to? did you see them go away?

A. They went up to Ball-Green.

Q. Did you follow them?

A. No.

Q. Did you go with them to Ball-Green?

A. Yes.

Q. Did you see them after that?

A. No.

Q. Did you see which way they went?

A. They went the Glasgow road.

Q. Did you follow them any longer?

A. No.

Q. Did you see any more of them?

A. No.

Q. How were they walking when you saw them go in that direction? were they marching?

A. No; they were not quite regular.

Q. And then you saw no more of them?

A. No.

Cross-examined by Mr Murray.

Q. How far is Ball-Green from Strathaven?

A. Not very far—just in the town, at the end of the town.

Q. It is not separated from the town?

A. No.

Q. The houses continue all the way from Strathaven to Ball-Green, so as to make it part of the same village?

A. Yes.

Lord President.—James Wilson, you are at liberty to put any questions yourself, or to suggest them to your counsel.

WILLIAM SEMPLE, *the elder—sworn.*

Examined by Mr Serjeant Hullock.

Q. Where do you live?

A. At Easter Overtoun.

Q. Is that near Strathaven?

A. Yes, within a quarter of a mile of it.

Q. Is yours a single house?

A. A single house.

Q. Do you remember being alarmed between the night of Wednesday the 5th, and the 6th of April last?

A. Yes.

Q. During the time of the alarm were you in bed?

A. I was in bed, but I got no rest till Mr Dicks, the writer, came to my house.

Q. You were in bed?

A. Yes.

Q. Did he come to your house?

A. Mr Dicks came and knocked at the door.

Q. In consequence of what Mr Dicks did, did you rise up?

A. Yes.

Q. Were there any persons after that came to your house?

A. Yes, an armed party came with guns.

Q. How long was it after Mr Dicks came?

A. About half an hour.

Q. What time of the night might that be?

A. It was before twelve when he came, and it was after twelve when they came.

Q. You say an armed party came—a party armed with pikes and guns?

A. I heard the guns, but I did not see any pikes; I heard them fire off two or three shots by my house.

Q. Did they do that before they got to your house, or afterwards?

A. Afterwards they surrounded the house.

Q. Then two or three shots were fired?

A. Yes.

Q. Did they come to your front or back door?

A. They came to the back door first, and then to the front door; they were on both sides.

Q. Was your house surrounded?

A. Yes.

Q. Was there a knocker at your door?

A. Yes.

Q. Is there a knocker at both doors?

A. Yes; they knocked at both doors very much.

Q. Did they say any thing when they knocked?

A. They threatened if I did not give up the gun in ten minutes they would burn the house.

Q. What did you do about that when that alternative was left you?

A. It was some time before we surrendered it, and I advised my son to give it up. He had the gun loaded, or we should be destroyed altogether.

Q. Did you give that advice from fear or alarm?

A. Yes. They threatened to break up the door in a few minutes if we did not surrender up the gun.

Q. You gave the gun up from fear and apprehension?

A. Yes, I allowed my son to do it.

Q. Did he hand it out of the window, or at the door.

A. I think he went to the door and gave the people the gun.

Q. Did you look out to see the people?

A. I looked out after they got the gun and were gone away.

Q. What number might there be?

A. I could not say, I saw only a few of them; they were all passed but a few of them, and I did not follow after them.

Q. You cannot tell the precise number?

A. No.

Q. Did you know any of the persons about your house?

A. No; I did not see all of them; they were at a distance. I did not go till they got the gun and were going away.

Lord President.—Was it very dark and wet?

A. It was a very dark night.

Mr Serjeant Hullock.—And wet?

A. It was fair then.

Q. It had been wet?

A. It had.

Q. Have you ever seen your gun since?

A. Never.

Q. What was it loaded with?

A. With powder and small shot.

Q. Were you at Strathaven the next morning?

A. Yes, I was.

Q. Did you see them march out in the morning?

A. I did not see that. It was Friday morning I was there.

Q. Had any of the party any conversation with your son at the time he gave the gun to them?

A. Yes, they talked together.

Q. What did they say to him when he gave the gun to them?

A. I heard them say, that it would be better for us than what it would be for them, and that we would get the gun back again; or that if they did not gain the day, they would lose their lives; it would be better for us if they gained the day; but if they did not gain the day they would lose their lives.

Q. Was that all they said?

A. Yes, that is all I remember that they said.

Mr Solicitor-General.—Repeat again what they said to your son.

A. I heard them say, "You had better give us your gun; and it will be better for you than us; and if we do not gain the day, we will lose our lives."

Cross-examined by Mr Murray.

Q. You say it was a very dark night?
A. Very dark.
Q. Did you see the people at the door?
A. No; I did not look till they were getting away.
Q. Did you see them before they went away?
A. No; I never looked out till my son gave them the gun.
Q. You say the house was surrounded?
A. Yes, I heard them at both the doors.
Q You heard people knocking at the doors?
A. Yes, and I heard two or three shots get off at the east end of the town.
Q. Were they going to the east or to the west?
A. I did not see. When I saw them going away, they were going down the road towards Strathaven.
Q. Is that to the east or to the west?
A. To the west.

WILLIAM SEMPLE, *the younger—sworn.*

Examined by Mr Drummond.

Q. Are you son of William Semple of Easter Overtoun?
A. Yes.
Q. Do you live with him?
A. Yes.
Q. Do you remember, in the night time in the beginning of April last, some people coming to your father's house?
A. Yes.
Q. What time of the night was it?
A. Between the hours of twelve and two.
Q. What day of the month was it?
A. I do not recollect the day of the month.
Q. The day of the week?
A. It was on Thursday morning.
Q. The beginning of April?

A. Yes.

Q. Were you in bed at the time?

A. Not when they came; we were out of bed by the time they came.

Q. What was the first thing you heard and saw?

A. The first thing I heard was the firing of a gun.

Q. What was the next thing?

A. The next thing was a rap at the door.

Q. Which door?

A. The back that was.

Q. What was done then? did they ask admission, or what?

A. They required arms, and ordered that we would give them up the gun.

Q. Did you make any answer?

A. I said I would not give it, and they threatened destruction to the house.

Q. What did they say, do you remember?

A. I do not remember the words.

Q. But they threatened to destroy the house?

A. If I did not deliver it.

Q. Did they say how they would destroy the house?

A. No.

Q. Did they say they would burn it?

A. I do not recollect that. They said they would destroy the house if I did not deliver it immediately; after some consideration I did deliver it—in the course of a quarter of an hour, I think.

Q. You handed it out?

A. Yes.

Q. Did you open the door, or how?

A. Yes.

Q. Did you see the people you gave it to?

A. I saw them, but it was very dark.

Q. How many of them did you see?

A. I saw two.

Q. But there were more than two?

A. I suppose so.

Q. Why do you suppose so?

A. I heard them.

Q. When you gave out the gun, was any thing said by them?

Lord President.—Would you have given out the gun if you had not believed there were more at the time?

A. No, I would not.

Mr Drummond.—What was said when you gave out the gun?

A. I do not remember any thing that was said.

Q. State the substance of it?

A. If they succeeded in the cause, they would bring back the gun; and if they did not, we could not expect them to bring it back; that was not the exact words, but that is something near to the meaning of it.

Q. Do you remember any thing more that they said?

A. Nothing that I recollect.

Q. Did they say any thing about coming back alive, or not?

A. I do not recollect as to that.

Q. Did they go away soon afterwards?

A. Yes.

Q. Do you know which way they went when they went away?

A. No.

Q. Had any of those people any thing in their hands at the time that you went out to give them the gun?

A. There were two guns that I felt.

Q. Besides the gun that you gave out?

A. Yes.

Q. You felt them?

A. Yes.

Q. How did you feel them?

A. I catched them before me.

Q. Were they presented to you?

A. They were before me, and I catched them.

Q. Which end of the gun was before you?

A. The mouth of it.

Q. They were pointed at you?

A. I do not know whether they were pointed at me, but I catched the muskets.

Q. Did you push them aside, or what?

A. Yes, I did.

Mr Murray.—It was so dark you could not distinguish whether the gun was pointed at you or not?

A. Not whether it was pointed at my body, but I felt it.

THOMAS HEPBURN—*sworn.*

Examined by Mr Hope.

Q. Where do you live?

A. At Beadledyke.

Q. Is that near Strathaven?

A. Yes.

Q. Do you recollect any thing occurring at your house, one night in the beginning of April?

A. Yes.

Q. What night was that?

A. It was upon the Wednesday night, I think.

Q. The first Wednesday in April?

A. I cannot say for the day, but it was at the time of the rise at Strathaven.

Q. Tell us shortly what took place; did some people come to your house?

A. Yes, they came; I was in bed, and I heard them came past the house, and I rose.

Q. Did they knock at your door?

A. Yes, they knocked at the door and window too; and they fired when they came to the house; and the gun was in the kitchen.

Q. Did they say any thing?

A. Yes, they demanded my gun.

Q. Did you give it them?

A. No; the gun was in the kitchen, and I rose from the place where I was lying, and they still continued rapping, but I never spoke to them.

Q. Did they go away at last?

A. No, they continued rapping.

Q. Did they get into the house?

A. No; they went away.

Q. Do you know this man at the bar?

A. Yes.

Q. Did you see Wilson the next day, on Thursday?

A. Yes, about seven o'clock.

Q. Was it in the morning or the evening?

A. The evening.

Q. Where was it you saw him?

A. Just at Easter Overtoun, by the road to Wester Overtoun.

Q. On what road?

A. The road to Hamilton.

Q. Was he going towards Strathaven, or from it?

A. He was going towards it.

Q. Did you ask him where he had been that day?

A. No, I did not ask him; he said to me first he had been suffering with the radicals, and I asked him if he knew any thing about them, and he said he did not. I asked him whether he did not go away with them that morning, and he said, "No, they came into me this morning, and bought an old sword of me, and I was going down to Kilbride that morning, and so I was convoyed that length."

Q. Did he say any thing further about that sword—did he say it was taken with them?

A. No, he said no more that I know of.

Q. Did he say any of the party carried it?

Mr Murray.—That is not a proper question, if you put the words you wish him to say.

Lord President.—What did he say? that they had come to his house, and bought the sword?

A. They had, and bought a sword of him, and he was going down to Kilbride, and he was convoyed that length.

Mr Hope.—What became of the sword?

A. I never asked him.

Q. Did he tell you not to put any questions upon the road as you were going along?

A. He said they asked people as they came along, what was doing at Glasgow, and they said there was nothing but peace, and he advised them to turn.

Q. Did he say any thing further?

A. No, nothing further passed that I know of; he went away to his house, and I went home.

Cross-examined by Mr Murray.

Q. You said that Wilson said he had always advised them to turn back?

A. Yes, he said he met some people on the road, and asked what was going on, and they said there was nothing but peace, and then he advised them always to turn all the way; from the information they got, he always advised them to turn.

Mr Serjeant Hullock.—What was the information that he told you they had got upon the road?

A. That there was nothing but peace.

Q. Who had told him that?

A. People that they had met upon the road coming from Glasgow.

Q. Did he say whom he had met on the road?

A. He never mentioned any person; whatever information he got on the road, he said he always advised them to turn.

Q. And the information was, that all was peace at Glasgow?

A. Yes; he was only going to Kilbride, to a hosier there; he is a hosier himself.

Q. This was the information they got on the road?

Mr Murray.—Whatever information they got on the road was, that there was nothing but peace?

A. He said, when they were going down, and they met any person, they asked how they were, whether it was him or the others, I do not know, but he was always advising them to return.

Mr Serjeant Hullock.—Did not he say that he asked people?

Mr Murray.—That is leading the witness, and putting the words in his mouth.

Lord President.—He has said, all the information he got upon the road was, that all was peace, and upon that he said he had always advised them to return.

Mr Serjeant Hullock.—What did he say then took place upon the road?

A. He said nothing, but only he told me, that when he was going down the road along with them, whatever information they got upon the road, he had always advised them to return all the way down.

Lord President.—What information did he say he got upon the road?

A. That there was nothing but peace.

Mr Serjeant Hullock.—On the re-examination, I have a right to see what he did say; he told you that whatever information he received, was always peace?

A. Yes; but how the information was obtained I cannot say.

Mr Murray.—I wish that put down, that Wilson did not say whether it was he that made the inquiry, or any other person.

Lord President.—I have it down more than once already.

Mr Murray.—I never saw a witness so pressed before in a Court; he is their own witness.

Mr Serjeant Hullock.—What did he say had been asked upon the road of any body?

A. He never mentioned what was asked, but only whenever they got any person on the road, they asked what was doing at Glasgow, and they said there was nothing but peace, and then he advised them to return.

Mr Murray.—This is more important; it is, that they always asked.

Lord President.—Very well, you have got it ten times over, I am sure.

Mr Murray.—I suppose your Lordship has it down, that he was only going to Kilbride at any rate.

JEAN HAMILTON—*sworn.*

Examined by Mr Serjeant Hullock.

Q. You live at Strathaven, do you not?

A. Yes.

Q. You are married, are you not?

A. Yes.

Q. Do you know James Wilson?

A. Yes.

Q. How near do you live to him?

A. I have been sometime at a distant farm.

Q. How near did you live to him last April?

A. May be within a quarter of a mile.

Q. Do you remember the day on which they marched off from Strathaven?

A. Yes, the 6th of April.

Q. Were you in his house that morning?

A. Yes.

Q. About what hour might you be there?

A. Between eight and nine o'clock.

Q. Was he at home when you went?

A. Yes.

Q. Was he alone, or were there other persons with him?

A. There were about ten or a dozen in the house.

Q. What part of the house were they in?

A. In his kitchen.

Q. What were they doing—how were they employed when you went in?

A. They were not employed very much—they were all sitting on the floor looking about them.

Q. What were they looking at?

A. There were some instruments in the house.

Q. What sort of instruments might they be?

A. There were some guns, and some things they called pikes.

Q. Were they lying upon the floor, or upon the table?

A. They were standing by the side of the wall.

Q. How many might there be of them?

A. I cannot say.

Q. Were they looking at them?

A. No, I cannot say they were looking at them; they were looking at them, and making a complaint that they had bad arms.

Q. Who made the complaint?

A. One made the complaint, and James made the reply to them, that they would get plenty of arms; that they would get a gun or two at Doctor Scott's.

Q. You mean James Wilson made that answer?

A. Yes; and two at Mr Hamilton's at Parkhead, and one at the Three Stones, and one at Gavin Semple, at the Ewk, and it was on the road, they would get them as they went past.

Q. Who made the complaint about the arms?

A. I do not know; I did not know them all.

Q. Were they strangers to you, the persons in the house?

A. Yes.

Q. Did they appear to you to have been travelling or walking?

A. I cannot say; but they were unknown to me; I did not know them personally.

Q. Did you say any thing to James, or to any person?

A. I asked him if he was going with them to-day, and he said, "Yes, yes."

Q. Was he doing any thing at that time?

A. He was filing something at a bench.

Q. What it was perhaps you cannot tell?

A. No, I cannot tell; it was something about the size of a penny piece, but I could not say what it was.

Q. Did you see the colour of it?

A. It was black.

Q. Do you know the road from Strathaven to Glasgow?

A. Yes.

Q. Are the houses that you have mentioned on the road?

A. It was not on the road straight.

Q. Were none of those houses?

A. No, they did not call at any of those houses.

Q. Do any of those houses lie on the road to Glasgow?
A. They were a little bit off of it.
Q. Did you see any flag or banner in the house?
A. Yes, I saw a flag.
Q. Did you read any thing upon it of any sort?
A. Yes, it was "Strathaven Union Society."
Q. Was that upon one side, or upon both sides?
A. I just saw the one side.
Q. And that was what you saw?
A. Yes, I saw not the other side at all.
Q. Where was it?
A. Standing against the side of the house.
Q. Against the wall?
A. Yes.
Q. Had any person hold of it?
A. No; it was standing there, and I saw those words.
Q. Did you see them march out that day?
A. No, I did not see them.
Q. You live about a quarter of a mile from Wilson?
A. Scarce that.
Q. Does he sometimes come to your house?
A. He was in our house on the 3d of April.
Q. That was two days before?
A. On the Monday before that.
Q. Do you know Margaret Young?
A. Yes.
Q. Was she in your house at that time?
A. Yes.
Q. Who beside that Margaret Young and Wilson?
A. My brother.
Q. Was there any conversation that you heard between Margaret Young and you and Wilson?
A. Margaret Young asked James Wilson, him that was an old reformer, what he thought of this reform, and he said he hoped they would win it.
Q. Did you say anything to him then upon that?
A. Yes; I said he was going to take away all those people to get them killed; and he said they could not die for abetter cause.

Q. Any thing more than that did he say?

A. And I said, if they were not killed they would be banished from their own places, and never come back again; he said there was no fear of them, they had the most number, and they were seeking the rights of their forefathers, and he hoped they would get them.

Q. Was this all that passed?

A. It was the most of it. I believe I told him, if they looked back to the Old Testament, they would find that the greatest number did not always win.

Q. That was all that passed?

A. Yes.

Q. Did he leave the house after that?

A. Yes.

Q. Did you often see him?

A. I did not see him no more after that till Thursday morning.

Q. Did you see him at any time in March?

A. No, I do not know when I saw him before that time; I cannot repeat the time, but I had not seen him for some time.

Q. Did you see him in the presence of your brother, Robert Hamilton?

A. Only those two times; it was on my brother's account that I was there.

Q. Your brother was in James Wilson's on Thursday morning?

A. I went there to search for him, and I got him there.

Q. Did you get him to go away with you?

A. No, he would not come; I insisted over and over again.

Q. You failed in your effort?

A. Yes, I did not manage it.

Q. What have you got in your hand?

A. You may see it. (*A paper was handed to Mr Serjeant Hullock.*)

Mr Serjeant Hullock.—It is only a certificate of her own character, my Lord.—Had you seen him in company with your brother before that time?

A. No, I never saw him.

Q. Did you see him give your brother any money?

A. I heard it, but I never saw it.

Q. Did Wilson tell you of it?

A. No, he did not.

Q. And you did not see it yourself?

A. No, I did not see it.

Cross-examined by Mr Murray.

Q. I think you said that those places where they were to get the guns were a little bit off the road?

A. Yes.

Q. How far off the road?

A. Maybe half a mile.

Q Is it not a mile?

A. No.

Q. Is it two miles?

A. No.

Q. Is it more than one mile?

A. No.

Lord President.—Which house do you speak of?

Mr Murray.—Gavin Semple's.

A. That is far.

Q. Is it a mile?

A. I have no doubt it is a mile.

Q. Is it two miles?

A. I cannot think it; I am not sure.

Q. Is it three miles?

A. I think it is not that.

Q. Is it not two miles?

A. I never went the road, but I know where the place is; it is quite off the road.

Q. How far is Parkhead off?

A. About half a mile.

Q. Is it not a mile?

A. No.

GAVIN COWPER—*sworn.*

Examined by the Lord Advocate.

Q. Where do you live?

A. Within a mile of Strathaven.

Q. What is the name of the place?

A. Coldstream.

Q. Do you remember getting any message upon Thursday the 6th of April?

A. Captain Crawford sent his servant over to tell me there were some people coming armed to my house that morning.

Q. Did he say who they were, or what they were?

A. No, he did not say.

Q. Were you in bed at the time?

A. Yes.

Q. Did they come to your house?

A. They did—three or four came first, and I met them in my own house.

Q. Is your house near the road leading from Strathaven to Glasgow?

A. About sixty yards.

Q. And this happened on the morning of the 6th of April—about what time?

A. About nine o'clock.

Q. What did these men ask, or what did they say they wanted?

A. They urged a gun from me, and I refused to give it them.

Q. Did they threaten you?

A. They threatened me again and again, upon my refusing them again and again my gun.

Q. How did they threaten you?

A. They presented four guns to me, and told me they would blow my brains out.

Q. Were there any other people in sight at that time?

A. I did not see any more than those in the house.

Q. What did you see out of the house?

A. There were a great many people, boys and men, with arms.

Q. What kind of arms had they?

A. Some of them had guns, some of them had what we may call pikes.

Q. Did you see these people march off?

A. Yes.

Q. Which way did they go?

A. They turned back to the Glasgow road, and went on towards Glasgow.

Q. Did you know any of those people assembled at all?

A. No, I could not name any of those in the house.

Q. Any of those out of the house?

A. Only one.

Q. Who was he?

A. His name was John Morrison.

Q. Does he belong to Strathaven?

A. Yes, I fancy so.

Q. What is he?

A. He is a higgler by trade.

Q. Had they a flag with them?

A. Yes.

Cross-examined by Mr Murray.

Q. Did you see the flag?

A. Yes.

Q. Do you know the prisoner Wilson?

A. Yes; I have long known him.

Q. Did you see him there?

A. No.

CHRISTIAN YOUNG—*sworn.*

Examined by Mr Solicitor-General.

Q. Do you live in the family of Gavin Cowper?
A. Yes.
Q. You are a servant of his family?
A. Yes.
Q. Were you a servant of his family in April last?
A. Yes.
Q. Do you recollect any body coming to the house in the beginning of April—any number of people?
A. Yes.
Q. Early in April, was this?
A. Yes.
Q. At what time of the day was it?
A. About nine o'clock.
Q. Was it upon the Thursday, do you recollect?
A. Yes, I believe it was.
Q. What did those people do?
A. They came into the house and demanded arms.
Q. Did they see your master?
A. Yes.
Q. What did they say to him?
A. They demanded his gun.
Q. Did they threaten him?
A. Yes.
Q. What with?
A. To blow out his brains.
Q. If he did not give them arms?
A. Yes.
Q. How many people were in the house?
A. I think I saw about six.
Q. Had those people arms?
A. Yes.
Q. What kind?
A. They were all guns that I saw.

Q. Did you see any body outside of the house?

A. Yes.

Q. Were there many people outside of the house?

A. Yes, a good many.

Q. Were those people armed on the outside of the house?

A. There were some of them armed.

Q. What were they armed with—muskets or pikes, or what?

A. I saw some with pikes, and some with muskets.

Q. Did you know any of the people that were there with arms?

A. Some of them

Q. Can you name any of them?

A. Yes; there was a person of the name of Stevenson; I do not know his first name.

Q. Any more?

A. William Robertson and William Howat.

Q. Were any of those that you have named in the house?

A. Yes, Stevenson and William Robertson.

Q. Were those the people that threatened your master?

A. Yes.

Q. The people went away?

A. Yes.

Q. Did you observe how they went?

A. They went towards the Glasgow turnpike road.

Q. Did they turn towards Glasgow, or how?

A. Yes; they went out to the Glasgow road, and turned towards Glasgow.

JOHN GRIERSON—*sworn.*

Examined by Mr Drummond.

Q. Do you live in Strathaven?

A. Yes.

Q. Do you know William Watson, a weaver there?

A. Yes.

Q. Did you see him one morning, in the beginning of April last, there ?

A. Yes.

Q. What was he doing at that time ?

A He was carrying a flag.

Q. Do you remember what day of the week that was ?

A. Thursday.

Q. Was it the first Thursday of April ?

A. Yes.

Q. Was there an inscription on the flag ?

A. I could not say.

Q. What prevented you from seeing it ?

A. I was not that nigh hand it.

Q. Was there any person along with Watson at the time that he was carrying the flag ?

A. Yes.

Q. How many people might be with him ?

A. I believe there might be about a dozen or thirteen; I could not exactly say.

Q. What were they doing—were they standing still and looking about, or what ?

A. I saw them walking along the Glasgow road, and I saw them standing.

Q. Along with him ?

A. Yes.

Q. Whereabouts might he be with them—in the front, or rear, or centre ?

A. I think he would be nearly about the centre.

Q. Had the people who were with him any thing in their hands ?

A. Yes, some of them had.

Q. What had they ?

A. Some of them had guns, and some of them had pikes.

Q. Can you name any of the persons who carried the guns or pikes ?

A. Yes, I saw Robert Hamilton carrying a gun : I saw John Stevenson carrying a gun.

Q. Any more ?

A. I do not recollect any more.

Q. Did you see any body else carrying any thing else along with the flag and Watson?

A. Yes, I saw James Wilson.

Q. That man? (*Pointing to the prisoner.*)

A. Yes.

Q. What was he carrying?

A. A sword.

Q. How did he carry it?

A. He carried it on his right side.

Q. In what way?

A. His arm was stretched down on his right side, apparently supporting the sword.

Q. Was the point upwards or downwards?

A. I cannot say.

Q. He had it by his side?

A. Yes.

Q. By the handle?

A. I cannot say.

Q. Which way did they go?

A. Towards Glasgow.

Q. Along the public road?

A. Yes.

Lord President.—Was the sword drawn?

A. Yes; there was no sheath on it?

Q. Was a person of the name of John Walters there?

A. Yes.

Q. Had he any thing carrying?

A. Yes, he had a pike carrying.

WILLIAM BARRIE—*sworn.*

Examined by Mr Hope.

Q. Where do you live?

A. In Strathaven.

Q. Were you there in the beginning of April last?

A. Yes.

Q. Did you observe any thing particular one morning in the first week in April?

A. Yes.

Q. What did you see?

A. I saw the party march out.

Q. On what morning was that?

A. On Thursday morning.

Q. Where did you first see this party?

A. I saw them before they went forward to the

Q. On what road is that?

A. The Glasgow road.

Q. How far from Strathaven?

A. About two hundred yards.

Q. Of what number might this party consist?

A. About thirteen, I think, at the time.

Q. Were they carrying any thing?

A. Ay, there were a number of them with arms.

Q. What sort of arms?

A. Pikes and guns.

Q. Had any of them a flag?

A. Yes, one of them.

Q. Do you know who that person was?

A. William Watson.

Q. How were those people going along the road—were they all in a crowd and confusion together?

A. No.

Q. Did they appear to be in some sort of order?

A. Yes.

Q. Were they divided into ranks of any kind?

A. Yes; to the best of my recollection they were divided into four different ranks.

Q. Were they walking quick or slow?

A. They were making ordinary haste.

Q. Did they appear to be marking time, and keeping in order together?

A. I could not say as to that.

Q. Did you continue to see them for any length of time?

A. No; they made a halt at the Ball-Green toll.

Q. For what purpose, do you know, did they make that halt?

A. I could not say.

Q. Do you know the names of any other persons who composed that party besides William Watson?

A. Yes; there were two men of the name of Steel were there, and James Wilson was there?

Q. Is this the man? (*the prisoner*).

A. Yes.

Q. Do you know the names of any others?

A. Robert Hamilton, and William Robinson.

Q. Do you know a person of the name of Jean Hamilton, or Hilton, in Strathaven?

A. Yes.

Q. Is that her brother?

A. Yes.

Q. Was William Howat there?

A. Yes.

Q. William Robinson.

A. Yes.

Q. Did you see a person of the name of James Donald there?

A. Yes, but he was not attached to the party—he was looking on, the same as I was myself.

Q. In what part of this body was Wilson at the time that you saw him—in the front, or the rear, or the centre?

A. He was about the rear, I think, to the best of my recollection.

Cross-examined by Mr Murray.

Q You saw Wilson in the party, you say?

A. Yes.

Q. How did he look—what appearance had he?

A. He appeared to be rather awkward—bashful-looking there.

Q. How did the others appear—in good spirits?

A. Yes, in tolerable spirits.

Q. Did you apprehend Wilson in the evening?

A. No; he was apprehended before I was brought to assist—he was apprehended before I came up.

Q. Do you remember what he said when he was apprehended?

A. He was apprehended before I got up.

Q. What did he say when you saw him?

A. He said that he had went out rather against his will; that he had a sword, and he had sold it.

Q. Did not he say that he was forced out?

Lord President.—That is the very thing you objected to.

Mr Murray.—I am surely entitled to lead in cross examination?

Lord President.—No; I never heard that with us.

Mr Murray.—I remember hearing a judge in England, upon that being stated to him, saying, "Good God, what a country!"

Lord President.—Go on.

Mr Murray.—Did not he say he was forced out?

A. I cannot say positively, but, to the best of my recollection, he said something of that.

Lord Chief Baron Shepherd.—This was before he was apprehended?

Mr Murray.—I have no wish to put it, only supposing the Crown had examined to the same point.

Lord President.—What a prisoner says after he is apprehended to excuse himself will go a very little way.

Mr Murray.—Certainly. Unless I had understood the Crown had examined to that very period, I would not have asked it.

Lord Chief Baron Shepherd.—The Crown examined to what he said at a subsequent time, as evidence against him;—you are entitled to the whole of that; but any conversation at a distinct period to which they have not examined is not evidence.

Mr Murray.—I certainly admit that it was only on the supposition that they had examined to the same time.

Lord President.—This witness was not present when they put the question.

Mr Murray.—According to my recollection, they examined the witness as to the period of the apprehension; this witness was not up at the moment of the apprehension,

but he comes up when the conversation takes place, and therefore he comes up at the time of a conversation to which the Crown examined.

Lord Justice Clerk.—The witness you refer to is Thomas Hepburn, who was asked to a conversation;—it was at night, when he was returning towards Strathaven; but he was not then in custody.

Lord Chief Commissioner Adam.—He was then walking back from Hamilton, on the Hamilton road.

JOHN HAMILTON—*sworn.*

Examined by the Lord Advocate.

Q. Do you recollect a party of people marching out of your town of Strathaven on Thursday the 6th of April last?

A. Yes.

Q. Had they a flag?

A. Yes.

Q. Did you see the inscription upon it?

A. Yes.

Q. What was it?

A. "Scotland Free, or a Desart."

Q. What part of Strathaven do you live in?

A. Nearly opposite to Wilson's.

Q. Did you see any people going out of Wilson's house the night before this?

A. Yes.

Q. Many people?

A. A good number.

Q. What time of night might that be.

A. From ten to eleven.

Q. Not later?

A. At that time there was a party did go from his house.

Q. About eleven o'clock?

A. Thereabouts, or perhaps rather after that.

Q. Did you see any thing more after that?

A. I saw Wilson come out of his house after that, and

come down the street into a man's house of the name of Rowney.

Q. Did you hear any thing said between Wilson and Rowney at this time?

A. I heard Rowney inform him that he was going to Glasgow directly; and Wilson said, "Very well; you will inform them that we will be down to-morrow morning by break of day."

Q. Did you hear any noise in Wilson's house that night at all?

A. Yes, I heard a noise.

Q. What kind of noise?

A. A great deal of such like as chopping with a hammer; and I heard a great deal of noise of people talking.

Q. What time of night might this be?

A. Just before the party went off, between ten and eleven o'clock at night.

Q. What sort of a party was it went off?

A. About fourteen of them, I think.

Q. Did you see them return again?

A. I could not see what number went off that night.

Q. Did you see them go off?

A. Yes, I saw them go off.

Q. Did they go off in any regular order?

A. Yes.

Q. Were they armed?

A. Yes; there was a person came out first, and cried, "File off," and a good number of persons that were at Wilson's at that time came out, and I do not know whether they drew up in any order, but they went off a short time after that.

Q. Did you see any thing of them the next morning?

A. Yes, I saw them march off.

Q. What order did they march off in then?

A. No regular order.

Q. What number were there of them?

A. Fourteen.

Q. Was Wilson one of them?

A. Yes.

Q. What part did he move in?

A. He was hindmost in coming out.

Q. Had he any arms?

A. He had a sword in his right hand.

Q. Unsheathed?

A. It was sheathed, I think.

Q. Do you know a person of the name of Penny that lives near you?

A. Yes.

Q. Did you see this person Rowney go to Penny's house that night?

A. Yes, I saw him at Penny's that night.

Q. Did you see him come out of that house or not that evening?

A. I am not sure whether it was before Wilson went into his house.

Q. How long before might it be?

A. I cannot say—it was not very long.

Q. But you did not see Rowney come out of that house, did you?

A. I am not certain whether I did or not.

Q. Rowney was at his own house at the time the conversation took place that you alluded to, so that he must have come out of Penny's before then?

A. Yes.

Cross-examined by Mr Murray.

Q. I believe you have spoken to a conversation between Wilson and Rowney?

A. Yes.

Q. About what time of night did that take place?

A. Between eleven and twelve o'clock at night.

Q. What sort of night was it?

A. It was very dark, and a little rainy.

Q. Where were you at the time?

A. I was standing in the entry, just at the door, facing the door, and Rowney's was on the right hand.

Q. How far off?

A. I was just standing at Rowney's door.

Q. And you heard Rowney say that he was going to Glasgow that night?

A. Yes; he was going off directly.

Q. Did you see him set out?

A. No.

Q. Do you know whither he went?

A. No, I could not say.

Q. How far is it to Glasgow from Strathaven?

A. About sixteen miles.

Q. Did you see Rowney the next day?

A. Yes.

Q. About what time?

A. When I rose; it might be between eight and nine o'clock.

Q. Did you speak to him?

A. No.

Q. You did not ask him if he had gone to Glasgow?

A. No; I never had any conversation with him.

Q. Was Rowney speaking loud at the time?

A. Yes; he spoke quite distinctly.

Q. You heard the whole very distinctly?

A. Yes.

Lord Justice-Clerk.—You say you saw a party of fourteen come out of the house and fall in the night before?

A. I cannot say what the number was.

Q. Had you an opportunity of seeing whether they were of the next morning's party or not?

A. No; I could not say.

Q. When they went away from the door, which way did they go?

A. The night party went the same road they went in the day, but instead of taking down the close called "the Old Close," they went up the street.

Q. Did you see which road they went?

A. No? I saw no further than that street.

AGNES RICHMOND—sworn.

Examined by Mr Solicitor-General.

Q. You are the wife of Robert Hamilton?
A. Yes.
Q. Is he a change-keeper?
A. Yes.
Q. Where?
A. At Kilbride.
Q. Do you recollect some people coming to your house in the beginning of April, upon a Thursday?
A. Yes.
Q. Were those people armed?
A. Yes; there were three called there with arms.
Q. What had they?
A. They had what they called pikes.
Q. Any thing else?
A. I saw nothing else.
Q. Did you know any of them?
A. None of them.
Q. How long did they remain in your house?
A. Perhaps five minutes.
Q. Do you know a man of the name of Walters?
A. Yes.
Q. Was he in your house about that time?
A. No.
Q. Did you see him in the course of that day?
A. Yes.
Q. Where?
A. Go past the house.
Q. Was he alone, or with others?
A. With others.
Q. How many?
A. I do not know the number.
Q. What might be about the number?
A. I cannot say.
Q. What time of the day was that?

A. I think it was in the fore part of the day, perhaps about eleven o'clock.

Q. Were those people that were with him armed?

A. Yes.

Q. With what kind of arms?

A. Guns and pikes.

Q. It was in the afternoon of that day that the three men you have mentioned came to that house?

A. No; it was in the fore part of the day.

Q. What induced them to leave your house?

A. I cannot say.

Q. Did you tell them the cavalry were in the way?

A. No.

Mr Murray.—Is not that putting words into the witness's mouth? I humbly submit to your Lordship, in such a trial as this that ought not to be done.

Lord President.—Certainly not.

Mr Solicitor-General.—If I have erred I am sorry for it.

Mr Murray.—I mean nothing personal.

Mr Solicitor-General.—I hope not.—Did those people leave your house?

A. Yes.

Q. Who paid the reckoning?

A. They paid the reckoning themselves.

Q. The three?

A. Yes.

Q. Did you know any of the people that you saw going through the street, as you have mentioned?

A. Only one, Walters.

Cross-examined by Mr Murray.

Q. Was your husband along with you at the time these people came?

A. No; I think that he might be about the house, but I do not know whether he was in the house at the very time, or not.

Q. Was he there before they went away?

A. I believe he was about the house, and not far off.

A. There were a number of them with guns, and three of them with pikes.

Q. Did they go past your house?

A. They went just by the house; they were not as far from the side of my house as from here to the wall.

Q. How were they marching?

A. They were in line; the pike-men were considerably before the gun-men.

Q. The pike-men were a-head.

A. Yes, they were.

Q. Were they in line?

A. I cannot tell whether they were in line or a-breast, those three that went first.

Q. You can say with more positiveness about the latter ones?

A. They were in a line, the gun-men.

Lord President.—You mean one after another?

A. One after another in line; whether there was one man or two a-breast I cannot say.

Mr Serjeant Hullock.—Had these latter men guns?

A. Yes.

Q. How did they carry them?

A. Under their arms I think.

Q. Do you know James Wilson the hosier?

A. I do.

Q. He is of the same business with yourself?

A. Yes; he is the same as I am.

Q. Do you remember seeing him that day?

A. Yes, I do.

Q. Was he along with those persons?

A. He came into my house after they were past my house.

Q. Had you any conversation with him about the matter?

A. As near as I can recollect I shall tell you.—After he came, the first thing I recollect his speaking about was asking for the tobacco and pipe, and he came into my house, and after he got the pipe, his clothes were wet; I took him to the fire to make them dry; so after he had been some little time in the house, he asked if we had a child about the house

to fetch him a bun, and I said there was no children about the house, but my daughter should fetch him one, and she brought him a penny loaf; and being an old acquaintance, I did not like to see him eating a bit of dry bread; we were out of bread at the time, or else he should not have sent for it; and I went and got a little tea, and made it ready for him, and he took it; and he began about our trade, the stocking-weaving, and frames, and so on in that way; and I recollect that I asked him particularly about weaving stocking-breeches, to shape them on the frame; we can all work that well enough, but to fit on the frame is more difficult, and we talked about that.

Q. Had you any conversation about the party that were passing?

A. We said very little about that; I asked him if any one of William Fleming's sons was there, and he said none of them was there; and that was all I recollect.

Q. Do you mean to state then that nothing more passed upon that subject?

A. Not that I recollect;—if any thing more passed I do not remember it. I never so much as said I thought he belonged to them.

Q. Did he signify to you that he did?

A. No, he never did.

Q. The only thing that passed upon the subject between you and him was your asking if William Fleming's sons were there, and he said they were not?

A. Yes.

Q. You asked after no other person?

A. No, not that I recollect.

Q. What made you ask if William Fleming's sons were there?

A. William Fleming lives in Kilbride, and he was afraid his sons might be among them.

Q. What made you ask him about it?

A. Because I thought he must know who were there, because he came in immediately after they had passed.

Q. That was the reason you asked that?

A. Yes.

Q. Did he get his tea, and go away from your house?

A. Yes; my daughter got some tea ready for him, and he took it and went away.

Q. Did not he say any thing after that?

A. What he said after that was about our trade.

Q. Tell me what he said besides that.

A. I do not recollect any more in respect of the radicals, except what I have told you.

Q. That was all that he said about the radicals?

A. That is all I recollect.

Q. Where did he go from your house?

A. He went homewards, and I went up the road nearly a mile, I dare say, with him.

Q. You had no conversation then about William Fleming's sons?

A. We met one of them after that, coming towards Kilbride, and there was some more with him, but I did not know any but him; he was coming to Kilbride to see his father.

Q. What brought him to your house that day?

A. I know nothing what brought him in; nothing. I recollect when he was going away to the door, he said, "If you should be called to an account, you can witness I was here on business."

Q. That was getting tea?

Mr Murray.—The witness says nothing about getting tea; that is putting it into his mouth.

Mr Serjeant Hullock.—No, he put it into his mouth; he told you that?

A. When he went out of the door, says he, "If you should be called to account, you can witness I have been here upon business."

Q. Had he ever told you that before?

A. Not that I recollect.

Q. This was the first time he told you to mind, and take care, if you were called on to account, that he had called there on business?

A. He said that when he went out, on business; and I said, "I can witness that you were here."

Q. Upon business?

A. No.

Q. Indulge us by repeating the expression he used, when you and he separated, when you and he went to the door?

A. I went near a mile up the road.

Q. Where was this?

A. Just before we went out of the house.

Q. State to the Court and the Jury the expression which he used?

A. That was just it.

Q. Repeat it again.

A. "If you are called to an account, you can witness I was here upon business."

Lord President.—And you answered, I can witness you were here?

A. That is what I said.

Cross-examined by Mr Murray.

Q. Was your daughter present at this conversation?

A. She was only in part of the time; she was not in the whole time that he was in the house; nor I was not in the whole time neither, for I went to the town for a quantity of tea.

Q. She was not present the whole of the time.

A. No, I was not.

Q. Was she in the room when you were out?

Lord President.—She went for a roll, and he went for some tea.

Mr Murray.—Was your daughter in the room when you went away?

A. She returned before I went away.

Q. You convoyed Wilson up the road?

A. I convoyed him nearly a mile, I think.

Lord President.—What time was it Wilson came into your house?

A. I cannot say to the hour, but I think it was about mid-day; but I neither looked at the clock when he came, nor when he went out, so that I cannot say.

Mr Murray.—How long do you think your daughter was out of the way?

A. I dare say she went near about a quarter of a mile to the place where she went for the bread.

Q. And she was there, except during the time when she went for the bread?

A. She was in, for any thing I know.

ISOBEL THOMPSON—*sworn.*

Examined by Mr Drummond.

Q. Are you daughter of John Thompson, hosier, in Kilbride?

A. Yes.

Q. Did you live with your father there, in the month of April last?

A. Yes.

Q. Do you remember, one day in the beginning of April last, some men marching through the town of Kilbride?

A. I did not mind it.

Q. Do you not remember seeing any men passing through the town, particularly one day in the month of April last?

A. I did not mind it.

Q. Do you know the prisoner at the bar—that man?

A. Yes.

Q. Where did you see him?

A. He came off the road, and came into my father's house.

Q. One day in the month of April last?

A. I did not mind, but it was that week the radicals were in our town.

Q. Did you see the radicals that day?

A. Yes.

Q. Was that before you saw Wilson?

A. I saw three before I saw Wilson.

Q. And then you saw him?

A. Yes.

Q. And then he came into your father's house?

A. Yes.

Q. Was there any body with him at the time?

A. No.

Q. You only saw three of them before?

A. No.

Q. Had they any thing with them?

A. Yes, spears.

Q. Did they pass through the town of Kilbride?

A. Yes.

Q. Did they pass towards Glasgow?

A. Yes, they were going that way.

Q. What did Wilson do when he came into your father's house?

A. He asked me if my father was in, and I said no, and I went out; and afterwards, when I went in again, he was smoking.

Q. What was said then?

A. I do not recollect.

Q. Do not you recollect what they were speaking about?

A. No, I do not.

Q. Do you know what he came there for?

A. No, I do not know.

Q. You did not hear him say what he came to Kilbride for?

A. No, I did not.

Lord President.—Did you go for a roll for him?

A. Yes.

Q. Did you get some tea too?

A. Yes.

Cross-examined by Mr Murray.

Q. I think you said you saw an armed party pass?

A. Yes.

Q. And then you saw the prisoner, James Wilson?

A. Yes.

Q. How was he with regard to them; before them, or behind them?

A. He was behind them when I saw him.

Q. Where were you standing?

A. I was standing at my father's door then.

Q. Is there a direct road from your father's door?

A. Yes, off the public road into my father's house.

Q. And you, standing at your father's door, saw him passing behind the party?

A. Yes, he left the party, and came down to my father's

Q. Was he armed when you saw him?

A. No, he had nothing at all.

Q. Is there another way to your father's house?

A. Yes, another road by the side.

Q. There is a road straight down from the high road?

A. Yes.

Q. And there is another which slants?

A. Yes.

Q. Which road did Wilson come?

A. He did not come down the straight road, but the slanting road.

Q. He first passed the straight road, and came down the slanting road?

A. No.

Q. There is a straight road from your father's house to the main road, and there is a side road—which road did Wilson come?

A. Down the side road.

Q. Did you see him leave the party?

A. Yes, I did

Q. How did he seem to get away from the party?

A. He just left them, and came down the side road.

Q. Did he seem to slip away from the party?

A. Yes.

Q. Did he speak to any body before he went away?

A. I did not notice that.

Q. He came down alone, I think you say?

A. Yes.

ROBERT STEEL—*sworn.*

Examined by Mr Serjeant Hullock.

Q. Where do you live?
A. At Strathaven.
Q. How long have you lived there—all your time?
A. Generally I have lived there.
Q. Do you live near James Wilson?
A. Not since Whitsuntide—I have removed since then.
Q. You lived near him before?
A. Yes.
Q. Are you in the habit of visiting him at his house?
A. Yes.
Q. Did you meet there a party of you?
A. We met there for to read the paper once a-week.
Q. To read the newspapers?
A. Yes.
Q. Who was the reader—himself?
A. No, I never saw Wilson read a paper—but sometimes one, and sometimes another
Q. He was always there, of course?
A. Yes; but his business often called him away, so that he was out in the course of the night.
Q. But he used to come back?
A. Yes.
Q. What sort of newspapers did you read?
A. The Manchester Observer.
Q. Any others?
A. The Spirit of the Union—that was not read in his house—it went through amongst us.
Q. It took his house in order?
A. Yes, he was one amongst us.
Mr Murray.—I do not see how this is evidence.
Lord President.—It may lead to something—one cannot

say it is not evidence—to be sure it is not evidence if it stands alone.

Mr Murray.—It is not important, perhaps, to object to it at present, but I apprehend, my Lord, that any thing to be proved here must be within the reign of the King.

Mr Serjeant Hullock.—It is so.—How long ago is it since you ceased to meet there?

A. In January—I cannot be positive to the date.

Mr Murray.—Before the 29th of January is beyond the reign of the present King.

Mr Serjeant Hullock.—You are right, I do not persevere in it.—Do you know the day they marched out from Strathaven?

A. I know it was early in the beginning of April.

Lord Justice Clerk.—It is not to be taken for granted, that no question is to be asked as to what took place in the reign of the late King; in the case of Thistlewood, it was ruled the other way.

Mr Serjeant Hullock.—There can be no doubt about it; but I am willing to wave it.

Lord President.—If any thing had a commencement before then, we may go back to it.

Mr Murray.—That society ceased before the King died, and they are attempting to prove an insulated fact, which took place in January, before the late King's death.

Lord President.—You are assuming that it will be evidence, or not evidence, according as it falls out.

Mr Serjeant Hullock.—You lived a considerable time at Strathaven?

A. A considerable time—above thirty years.

Q. Did you ever see the Union Strathavon flag?

A. No, except it was that that went out of the town that day—but I was two hundred yards from it.

Q. You never saw it at any other time?

A. No.

Q. You know William Robertson, do not you?

A. Yes.

Q. You say that you saw them march out on the 5th?

A. On the 6th.

Q. In the morning?

A. Yes.

Q. Were you near?

A. About 150 or 200 yards.

Q. Were you near enough to recognize any of the persons there?

A. I could not, except one or two that were separated from the party—I could not say whether they were with them or not, but they were said to be with them; and they were detached from them off the side of the crowd.

Q. You know William Robertson?

A. Yes.

Q. Did you see him on the 5th, at any time?

A. Yes.

Q. Had you any conversation with him about any thing?

A. Very little.

Q. State what it was?

A. He called on me on the evening of the 5th; he called on me at my father-in-law's, and looked in at the door—he did not ask me, but I thought he was wishing to speak to me, and I followed him to the door, when he went out, and he told me there was news from Glasgow, and that there was a meeting intended; but who brought the news, or what it was, I did not ask him; some people came forward and interrupted us.

Q. What did he say about the news?

A. He said there was strange news from Glasgow.

Q. Did he tell you what it was?

A. No.

Q. He told you the person who brought it?

A. He told me John Torrence, a tanner; but he likewise said there was a man came, but what the man's name was he did not say at the time.

Q. Do you know a man of the name of Shields?

A. There was a man came who was reported to be of the name of Shields.

Q. Did you hear him say so?

A. No.

Q. Did he tell you where the meeting was to be?

A. No; some people came forward, and we just left each other—the night was very wet.

Q. You went to Wilson's that night?

A. Yes, after that.

Q. Did you find Wilson at home?

A. I could not see; I was not a minute, I believe, in the house—I did not see Wilson in the house.

Q. Who was there that you knew?

A. I only knew one or two.

Q. Mention them?

A. John Stevenson.

Q. Who else?

A. That William Robertson was there.

Q. John Stevenson and William Robertson were there?

A. Yes.

Q. Who besides?

A. I could not positively say upon oath.

Q. How many were there in number?

A. I could not say positively what the number might be, because there was one here and another there, in a confused state.

Q. You remember Robertson and Stevenson?

A. Stevenson spoke to me, makes me remember it.

Q. You remember Stevenson and Robertson there?

A. Yes.

Q. State about what number there were there at that time?

A. I could not say—there might be from a dozen to twenty, or there might be more.

Q. What time of the night was this?

A. It might be about ten or eleven.

Q. Stevenson spoke to you?

A. Yes, he asked me if I had heard of their great news, or this great news.

Q. What did you say to him?

A. I said I had heard some rumours, and I asked him what the rumours were, and he repeated them.

Q. What did he say?

A. He said that the radicals in Glasgow were up, and it was time that any person who was of that opinion should join them.

Q. What answer did you make to that?

A. I made very little answer; he asked me if I would join them, and I said no, I would think upon it, or, rather, he said he hoped I would join them.

Q. And you said that you would think upon it?

A. That I would think upon that subject.

Q. Did you leave the house then?

A. Directly.

Q. And you did not go with them, I believe?

A. No.

Q. Did you see them march out the next day?

A. Yes; but I was at a distance from them.

Q. Did you see Wilson on the following morning?

A. Yes; but he was not close to the body—he was rather behind the body.

Q. When you saw him the next morning, they were marching, were they?

A. Yes; I would not have known it had been a body of that description if it had not been for that.

Q. You were not near enough to distinguish any of the persons that formed the body, but you saw there was the body, because you saw a flag?

A. Yes.

Q. You were near enough to distinguish Wilson's person, who was a little in the rear of the party?

A. Yes.

Q. How near might he be?

A. A few yards, may be two or three yards.

Q. He was the last man of the party?

A. Yes.

Q. And, as you think, two or three yards behind them?

A. Yes.

Q. But they were all marching in the same way?

A. There was a great crowd round them, so that I could not distinguish which was one and which was another.

Q. Had you any conversation with Wilson that morning?

A. Yes, some little.

Q. Where was he when you had that conversation?

A. In his own house.

Q. That was before the party set off?

A. Yes.

Q. You went into his house, did you?

A. Yes.

Q. What time in the morning might that be?

A. It might be between six and nine; I cannot tell the time, for I was not working that morning, there was such confusion in the town.

Q. Had every body given up work then?

A. I do not think there was much working that morning.

Q. Was the house full?

A. No; there was Wilson and his wife, and a girl, and a person or two.

Q. Where did all the party come from that marched out afterwards?

A. I cannot say that.

Q. You had a little conversation, just state it to us as far as you recollect?

A. The conversation was very trifling; I asked what was the news of the morning—he said there was little, there had been a confused night; he said he heard there was a party gone away to Glasgow—and I told him I heard so too, I had heard it several times before I went to his house, which was the cause of my going to his house to inquire.

Q. You thought he could give you information upon it?

A. I thought he would know.

Q. What did he say to you?

A. That was all the conversation that I could pointedly recollect, because I was no time there.

Q. You went there to learn the news?

A. No.

Q. What did he say to you when you went there?

A. You have heard the most that I pointedly said already.

Q. Just now repeat it, for I have forgot it—have you forgot it too?

A. I have.

Q. Have you forgot what you said just now to me?

A. I am on oath.

Q. You are upon oath, that is one reason why you ought to mind what you are about—state to us again what conversation took place between you and Wilson when you went to the house that morning?

A. I asked him what news there was this morning; and he said he had heard there was a party had gone to Glasgow; and says I, "Is that all the news?" or something to that purpose, but I could not positively attend to the words, it is a good while since. I said I had heard so too, for I had heard it a dozen of times before I went there; and I do not remember much more conversation that happened.

Q. Give us that little?

A. There might be some common observations, but there was nothing that I recollect.

Q. You mean to state upon your oath that you recollect nothing more?

Lord President.—Was there any thing more passed, or not?

A. I do not recollect any thing; there might be some other common observations, but I was no time in the house.

Mr Serjeant Hullock.—That you mean to state then, do you?

A. Yes.

Q. How long was this before the party marched with the flag, of which you have been speaking?

A. It might be an hour and a half, or an hour, I could not positively state the identical time, but it was near an hour.

Q. You say you went in the night before, and had some conversation with Robertson and Stevenson.

Lord President.—You understood there was another party had marched off before?

A. Yes.

Mr Serjeant Hullock.—It was an hour and a half before the party you saw marched off?

A. It might be an hour, or an hour and a half.

Q. The night before there was great confusion, and you were not there a long time?

A. No, I was not.

Q. During that time did you see Wilson in his own house?

A. No, I did not.

Q. You swear to that?

A. Yes.

Q. You swear that you did not see Wilson at any part of the time you were in the house that night?

A. No, I could not say whether he was down at my father's-in-law hearing the papers that night or not.

Q. But in his own house you did not see him?

A. I did not.

Q. Had the persons any arms with them that night?

A. I did not see any.

Q. You saw none?

A. None.

Q. You saw none when Stevenson spoke to you?

A. Yes, I did at that time, he had a pike in his hand.

Q. Did you see any gun?

A. No.

Q. When you left the house that night, did you go directly home?

A. Yes.

Q. To bed probably?

A. No; I went out to my father's afterwards, which is near a quarter of a mile.

Q. You went out again afterwards?

A. Yes.

Q. Did you go to Wilson's again?

A. No.

Q. How long did you stay at your father's?

A. I smoked a pipe with him—I might be a quarter of an hour, and then went home and went to bed.

Q. Was there any party there?

A. No, none but the family.

Q. Was Robertson there, or Stevenson?

A. No.

Q. Howat?
A. No.
Q. Wilson?
A. No, none but my three brothers and sister.
Q. Did you then return home to bed?
A. Ay, as fast as I could run almost; it was very wet.

ANDREW SHEARER—*sworn.*

Examined by Mr Serjeant Hullock.

Q. You know the prisoner at the bar, do not you?
A. Yes, I do.
Q. How long have you known him?
A. Ever since I knew any thing almost; he was a neighbour.
Q. Were you ever in any club with him?
A. Yes, I was.
Q. What did they call it?
A. They called it the Union Club, or Class.
Q. Had you any colours belonging to that club?
A. None that I know of.
Q. You never saw a Union flag at Strathaven?
A. No.
Q. You never heard of such a thing at Strathaven?
A. I heard of such a thing that day the armed party marched away, that there was such a thing, but not before.
Q. Who was the president of your club?
A. There was no president.
Q. Who was the class leader, or whatever you call it?
A. We elected one the first month, and we never elected no more—we just carried on—I do not know whether his election was continued or not.
Q. What was his name, do you remember?
A. The prisoner at the bar.
Q. What did you call him—class leader, or president—or what?
A. Class leader.
Q. Where did you meet?

A. In the prisoner's house.

Q. Did you meet once a-week, or oftener?

A. Once a-week.

Q. What might be the night selected?

A. Monday night.

Q. What time did you meet?

A. After the post came home.

Q. After the newspaper had come?

A. Yes, there was a newspaper that came, and we met to read it.

Q. What newspaper did the club pitch upon?

A. The Manchester Observer.

Q. Any other?

A. We got the Spirit of the Union.

Q. Any thing else?

A. The Black Book.

Q. The Black Book?

A. Yes.

Q. Where did that come from?

A. That was published in London, I suppose.

Q. The Black Book in London?

A. I suppose it was published in London—I do not recollect.

Q. These three papers you read every Monday night?

A. No, only the Manchester Observer.

Q. The Manchester Observer is published on the Saturday, is it not?

A. I could not say—it came to us on the Monday night.

Q. How many of you might there be now?

A. There would be between seventeen and twenty, I think—or between sixteen and twenty.

Q. That might be about the number?

A. Yes.

Q. Were Stevenson and Morrison members of your club?

A. No, neither of them.

Q. Can you tell us any names?

A. There was Robert Steel.

Q. That is the last witness?

A. I suppose it was—and James Wilson, and myself, and John Hind.

Q. Was Robertson or Morrison in it?

A. No, neither of them.

Q. You know Robertson, do not you—and Stevenson and Morrison?

A. I know Robertson—I never conversed with Stevenson.

Q. But you know him by sight?

A. Yes.

Q. Where do they put up advertisements and proclamations, and things of that sort, in your town?

A. I do not know if there are any particular places—just the house-end—the gables and sides of the houses.

Q. Did you see the Address put up?

A. I saw it after it was put up.

Q. You saw it against a wall?

A. Yes, I did.

Q. When did you first see it against the wall?

A. It might be on the Tuesday or the Wednesday—I think that was the first time I saw it.

Q. Was there more than one?

A. I saw one the first that I read, and I saw one before, but I did not read it.

Q. Where was that which you read—not in the same place as the other?

A. No, it was not.

Q. Two different papers therefore?

A. Yes, the one I saw the first day was at a great distance.

Q. Where was the other posted that you read on the Tuesday or Wednesday?

A. At the house-end of William Moor, wright.

Q. Did you read the whole of it?

A. I read part of it; I cannot say whether I read the whole of it.

Q. Did you read the beginning of it?

A. I think I did.

Q. Have you any doubt?

A. I do not recollect at this distance of time; I was paying no particular attention to it.

Q. Do you mean by that you could not tell us how it began?

A. I think it was an Address to the Inhabitants of Great Britain and Ireland.

Q. Do you know where it was dated?

A. No, I do not know where it was dated.

Q. What was the date which was upon it? you saw it on the Tuesday or Wednesday?

A. I could not say what day it was dated on neither.

Q. By whom was it signed?

A. By the Committee of Organization, I think.

Q. Was that all that you remember of it?

A. No, there was an address to the soldiers in it.

Q. How did it begin now that part of it?

A. I could not say that, but I recollect that there was such a thing in it.

Q. What did it say about the soldiers—I do not want the words?

A. I think it told them to turn their eyes to Spain, and see what the soldiers there had accomplished; I do not think those were the words.

Q. You think that was something like it?

A. Yes, I think it was; I think that was the meaning of it.

Q. Do you remember any other passage in it which made any impression on your mind?

A. No, there was none that made a particular impression on my mind. I think it recommended the people to desist from working.

Q. What were they to do then? if they were to give over working, they must give over eating and drinking?

A. Till they had got their rights, I think.

Q. They were to give over working till they got their rights?

A. Yes.

Q. What sort of rights were they to get?

A. That was a thing I could not say.

Q. What did it say to you?

A. I do not remember its saying any thing about the rights.

Q. What, not what they were?

A. No, I do not remember what they were.

Q. Did you give over work?

A. No.

Q. Partly?

A. Yes, I did; I did not give it over wholly.

Q. Did you work as you had done before?

A. No, I wrought as I had done for a good while before nearly; not quite so much. I had been bad for some time before.

Q. Did you give over work in consequence of that Address?

A. No, I do not think I did.

Q. Look upon the Jury, and tell me upon your oath, did you not cease to work in consequence of what you had read in that Address?

Mr Murray.—Is not that leading?

Mr Serjeant Hullock.—Certainly not.

Lord President.—What was your reason for not working so much as before?

A. I wrought nearly, but not quite so much as I did before.

Mr Serjeant Hullock.—Can you tell me what rights those were that they were to have?

A. I do not recollect that at all.

Q. Do you remember any more of the Address?

A. No, I do not recollect any other part of it.

Q. Do you know how it began? you have told us it was addressed to the inhabitants of Great Britain and Ireland.

A. Yes.

Q. How did it go on after that?

A. I do not recollect how it went on after that.

Q. You saw it on the Tuesday or Wednesday?

A. The Tuesday or Wednesday. I cannot say which of those days it was.

Q. Are you sure you did not see it before that?

A. Yes.

Q. Not to read it?

A. Not to read it.

Q. Do you remember the last words in the paper below that which you have been speaking of, about the Committee of Organization?

A. I do not recollect any thing more of it than that.

Q. You have been out of health?

A. Yes.

Q. How long had you been out of health before this time?

A. For about a year nearly.

Q. That prevented you from working in the way you had worked before your illness began?

A. Yes, it did.

Q. But you did work to a certain extent, I suppose?

A. Yes, I did.

Q. Did you continue to work as much as you had done the preceding week, the week before you saw the Address, the week after you saw it?

A. No, I did not.

Q. What are you?

A. A weaver.

Q. Is that the common species of workmen at Strathaven?

A. Mostly weavers.

Q. Did, or did not the weavers of Strathaven in general give over working after that Address was put up?

A. They gave over working upon the Monday generally, but after that I do not know what they did.

Q. Then, in general, they gave over working on the Monday?

A. Yes.

Q. What Monday are you speaking of? the Monday before the marching of the party from Strathaven?

A. Yes.

Q. Wilson is a hosier?

A. Yes.

Q. Is he a working hosier? did he work himself?

A. Yes, he wrought himself.

Q. Did he work every day? was he a regular man at his work?

A. I do not know that. I have seen him frequently at his work; but whether he was regular in his attention to it, I cannot say.

Q. You do not know that?

A. No.

Q. Were you at Wilson's on the 5th of April?—I am speaking of the night before the marching out.

A. Yes.

Q. What hour were you there?

A. I think it would be between ten and eleven; I cannot say precisely.

Q. You think it might be thereabouts perhaps?

A. Yes.

Q. Were there any other persons there besides you?

A. There were a great number.

Q. Was he himself there?

A. Yes, he was.

Q. And there were a great number of others?

A. The house was about full, the kitchen.

Q. How many would the house hold?

A. I cannot say.

Q. About how many?

A. I think it might hold about twenty or thirty easily.

Q. It was quite full?

A. It was standing *gey* and crowded.

Q. But whether it was quite full, you cannot say?

A. No.

Q. What did you hear them say?

A. Shortly after I went, James Watson asked me if I had heard the news; and I asked, What news? and he said, The news that John Torrence had brought up. I said "Yes."

Q. What did he say then?

A. He said no more—that was all that passed.

Q. Was there no other conversation between you and any other person in the house?

A. There was one between John Stevenson and me.

Q. What was that?

A. I had heard a report in the town that they were going to march away that night, and I went up to see and prevent them; and when I was endeavouring to do so, Stevenson said, That they ought to send me to Glasgow with that story; and I said, That was just if I would go myself; and he said, That there would not be a man go out of that house that night, unless they went with them; and when I heard that, I had an umbrella, and took it up to come away, and he called for a pike, and I came out, and he made a flustering at something, but he did not attempt to stop me.

Q. Did he get the pike?

A. I could not see whether he did or not—I just came off.

Q. Did you see any pikes there?

A. I saw two or three poles standing against the wall—but whether they were pikes or not, I could not say.

Q. These sort of things, perhaps? (*pike staves.*)

A. Yes; those sort of things—long poles.

Q. Any guns?

A. I do not recollect positively, whether I saw one gun or not.

Q. You cannot recollect that?

A. No, it is just like a dream to me.

Q. Do you know a place called Three Stones, near Strathaven?

A. Yes.

Q. What is it—a field?

A. It is a farm.

Q. How far is it from Strathaven?

A. It would be half a mile, or thereby, I think.

Q. Were you ever there?

A. I have been there many a time.

Q. Were you there on the night of Monday or Tuesday?

A. I was there on the night of Monday.

Q. What time of the night might you be there?

A. I think it was some time between eight and ten.

Q. Was it light or dark?

A. It was dark.

Q. Very dark?

A. Very dark.

Q. What did you go to do at that time of night? how many of you were there—you could not be alone?

A. There was a good number there.

Q. How many?

A. I think there would be between forty and fifty.

Q. Did you accompany any of them from Strathaven—or did you go alone?

A. I went alone.

Q. How did you know there was to be any body there but yourself?

Q. I heard it by the report of the town.

A. How long did you continue there?

A. I could not say the precise time—I think about half an hour.

Q. Did you do any thing all that time, or stand looking at the sky?

A. We were talking most part of the time.

Q. Was any body there that you knew—was Stevenson there?

A. I think he was.

Q. Was Robertson there?

A. I think he was.

Q. Any person else whom you can tell us of—William Howat, do you know him?

A. Yes.

Q. Was he there?

A. I cannot say whether he was or not.

Q. But you think that Stevenson and Robertson were there?

A. Yes, I think they were.

Q. Had you any conversation with them, or did you hear them say any thing to the meeting?

A. I heard them propose to the meeting to go out to borrow arms.

Q. How were they to borrow them—what were they to do?

A. They never said what they were to do with them.

Q. But how were they to get them?

A. They were just to seek the lend of them.

Q. What did they say?

A. They said they would either seek the lend of them, or borrow them, I cannot say which.

Q. Did they mention what friends they meant to apply to to borrow arms?

A. No.

Q. For what purposes were those arms to be borrowed?

A. They never said.

Q. What were they to do with them?

A. They never said what they were to do with them.

Q. How happened it to be talked about borrowing arms, and then to say nothing what they would do with them?

A. I do not know; we happened to be talking to them.

Q. You were there half an hour?

A. Yes.

Q. Did this conversation about borrowing arms continue all that time?

A. Most part of the time.

Q. What did they say about it?

A. Some said it would be a very imprudent step to borrow arms?

Q. Why imprudent, unless they went off?

A. I do not know that.

Q. What was agreed upon at last?

A. There was nothing agreed on at all.

Q. Did you say any thing at all?

A. Yes, I said it was but a very imprudent step.

Q. What to do?

A. To borrow arms.

Q. Why so?

A. Because I thought they might bring danger on themselves.

Q. What in borrowing arms?

A. Yes.

Q. What harm is there in it?

A. After the Address was posted up, it might be alleged they were going to use them against the government.

Q. Was that given as a reason at the meeting?

A. No.

Q. That was your private thoughts?

A. Yes.

Q. That is the ground of your opposition to this proposition?

A. Yes.

Mr Murray.—This is the private opinion of the witness, which is not evidence.

Lord President.—I think it is evidence. He had persuaded them not to do it, because after the address it might be construed they were to be used against the government.

Mr Murray.—Is not that the private opinion of the witness?

Lord President.—Yes. If a man says he thinks a thing, have not you permission to ask why he thinks so?

Mr Murray.—What a party thinks is an internal state of reasoning in his mind, so far as he says any thing that is evidence, I apprehend; but so far as a witness says, I said this for such and such reasons which I did not explain, that is no part of the *res gesta* at that meeting. But supposing he had five hundred reasons, all of which might make him say one thing or another, is he entitled to give one, two, three, four, or any number of those reasons for his opinion. I apprehend that his internal reason, whether it consists of one reason or five hundred, or good or bad, is no part of the *res gesta* at that meeting.

Lord President.—It explains the reason he dissuaded them from borrowing arms, a thing in itself quite innocent.

Mr Murray.—But it is giving his opinion.

Lord President.—If you chuse to take the opinion of the Court, I will put it.

Mr Murray.—I submit I should have the opinion of the Court. My point is this: The witness says he objected to the borrowing arms; then the witness is asked his reason for dissuading them from borrowing arms. Now the point I submit to the consideration of the Court is this: that whatever the witness says to the meeting is part of the *res gesta*, and may be given in evidence. I understood that was the opinion settled this morning, and that it forms evi-

dence though the prisoner is not there, becuase connected with the conspiracy. But then I submit that the internal reasons of the witness, which he does not utter, are not the subject of evidence, because the witness may have a great variety of reasons. He says I am against borrowing arms, and none of the reasons are expressed. If he expresses them to the meeting, it gives a character to the meeting; but what he retains in his breast, and does not deliver to the meeting, I submit is in no shape to be given in evidence. But a variety of things may happen at a meeting; there may be a variety of things. A man may state an objection to do a particular thing; he may have reasons which may give a different aspect to what he uttered at the time. I have no means of ascertaining whether he is telling truth or falsehood, because it is kept in his own breast, and then it comes out without any means of contradicting it, or defending the person against whom it is adduced. I submit this is not evidence; nay, that it would be most dangerous if such evidence were admitted.

Lord Justice Clerk.—It is not evidence that affects the panel.

Lord President.—He is entitled to explain himself—it would discredit the witness if he could not give a reason for doing it.

Lord Chief Baron Shepherd.—The Court are not deciding that what passed in his breast is a fact against the prisoner. If he was to say that his reason for doing it was because he thought so and so, that would be no evidence; but he says I thought something criminal might be imputed to their act if they borrowed arms; that is no evidence against the prisoner that there was something criminal, but it is merely a reason for dissuading them—I thought it was imprudent, and so far it was heard, but it is no evidence of a fact against the prisoner. And, therefore, it is not to be understood that the Court mean to lay down as a general position, that what passes in a man's mind is evidence against a party charged, nor do I understand the question to be so put or intended.

Mr Serjeant Hullock.—You say you opposed that?

A. Yes.

Q. Were you the only person who opposed that proposition that was made to borrow arms?

A. No, I believe there were some others opposed it at that time.

Q. Did they give any reason for their opposition?

A. No, none that I recollect.

Q. What did they say?

A. They said they thought it would be very dangerous for the folk themselves; I think that was the reason they gave, but it was at a great distance of time, and I was paying no attention to them.

Q. Who made the proposition?

A. I think it was Stevenson.

Q. Did any body second it?

A. No.

Q. Was that the last meeting you attended of that party?

A. Yes.

Q. I asked you whether you were a member of any society there?

A. Yes.

Q. You said you were?

A. Yes.

Q. Who was the secretary or president, or whoever took care of the concerns?

A. I told you before that there was no president—that there was a class-leader.

Cross-examined by Mr Murray.

Q. You said you knew Wilson, the prisoner at the bar?

A. Yes.

Q. You spoke just now with regard to what passed at a meeting on a Monday evening?

A. Yes.

Q. Was Wilson at that meeting?

A. No, I think not.

Q. You spoke some time ago with regard to a sort of society that took in certain newspapers?

A. Yes.

Q. And you mentioned some of the members of the society—tell me the names of the members of the society as near as you can recollect?

A. There was James Wilson, Robert Steel, myself, James Donald, William Martin, William Ritchie, John Hind, James Thompson, Peter Cunningham, William Scott, Thomas Somerville.

Q. Do you remember any others?

A. No, I think there were more, but I cannot remember them now.

Q. That meeting ceased in January?

A. Yes, it did.

Q. What time in January?

A. I think it was between the 10th and the 20th of January, but what time I cannot say.

JAMES HARDIE, Esq. called again.

Examined by the Lord Advocate.

Q. Are you an acting Justice of the Peace for this county?

A. I am.

Q. Were you in Glasgow in the 1st of April?

A. Yes, I was.

Q. What was the state of the people in the course of the week immediately preceding that in this town?

A. Quiet in general.

Q. Were all the people employed as usual?

A. In general.

Q. Did any thing occur particular in the course of the night of Saturday the 1st, and Sunday the 2d of April?

A. There was a radical Address posted up through the street.

Q. What did that Address purport to be?

A. Addressed to the people of England and Ireland.

Q. What date did it bear?

A. The 1st of April, I think.

Q. What were the contents of it?

A. There was something addressed to overturn the constitution.

Q. Was there any address to the soldiers in it?

A. There was.

Q. How was it signed?

A. I do not recollect that it was signed by any person.

Q. Did it bear to be signed by order of any party?

A. By order of the Committee for the Organization of a Provisional Government.

Q. You saw this posted up?

A. I did.

Q. Did you read it?

A. I read part of it.

Q. When so posted up?

A. Yes.

Q. Did you see many of them?

A. I saw a good number.

Q. All over the town?

A. All over the town and neighbourhood.

Q. Did you take down or remove those Addresses?

A. I removed one, and attempted to remove another.

Q. You took it down?

A. Yes.

Q. Are you in possession of that Address you so took down?

A. I am.

Q. Will you produce it?

(*The witness produced it.*)

Q. That is the Address you took down—where?

A. It was off a well in this town.

Q. Had you occasion to observe the effect of this publication produced upon the town of Glasgow?

A. Yes, I had.

Q. Describe it to the Jury?

A. People in general turned out from their work altogether; the town seemed filled with strangers very much; and the working class of people ceased to work, and they were going about in a tumultuous manner in the streets.

Q. Were you in the streets yourself?

A. Yes.

Q. Did the people walk in common?

A. In general; but there were several parties that marched in an orderly way, as military men do.

Q. Keeping step?

A. Keeping step—four abreast, I think.

Q. Were there a considerable number of those parties?

A. I think I saw three or four upon the Monday.

Q. Was there any alarm exhibited by the inhabitants in general? was there any thing that shewed that alarm?

A. Yes, there was.

Q. What was it?

A. Fears for private property in general.

Q. Did they take any steps in consequence?

A. The magistrates issued a proclamation upon the Sunday.

Q. Directing what?

A. Directing all well-disposed persons to be in their houses by six o'clock in the evening, and after that the shops would be shut at six.

Q. Did they order them to be shut at six?

A. They did.

Q. And they were shut?

A. They were generally.

Q. Were they shut earlier?

A. On the Wednesday they were shut by three o'clock throughout the whole town.

Q. What was the reason of this proceeding on Wednesday?

A. The town seemed to have more strangers in it on that day than any other, and reports came in from various quarters, stating that the radicals were marching against the town in great force.

Q. Did this continue for most of that week?

A. It did.

Q. Were there any steps taken in consequence of this for the general safety and peace of the town?

A. A number of additional constables were sworn in for the county, and I believe the town magistrates did the same, and great reinforcements of military were brought in.

Q. Besides Glasgow, did you see those placards any where else?

A. I went to Bridge Town on the Sunday, and saw a great many there.

Q. About how many?

A. I think I saw about a hundred.

Q. Posted up?

A. Yes.

Lord President.—Had you yourself great apprehensions for the safety of the town?

A. I had.

JOHN STEEL,—*sworn.*

Examined by Mr Solicitor-General.

Q. Do you live at Strathaven?

A. Yes.

Q. You lived there in the beginning of April last?

A. Yes.

Q. Do you recollect any thing of the appearance of a Proclamation or Address there?

A. Yes.

Q. Can you say about what day?

A. It made its appearance, I think, upon Sunday the 2d of April.

Q. Where did you see it?

A. I saw it at the town end.

Q. Was it posted up upon any place?

A. No.

Q. Where was it?

A. It was in a man's hand.

Q. Did you read it?

A. No.

Q. Did you hear it read?

A. Yes.

Q. Do you recollect any thing of what it contained?

A. I really cannot say that I can particularly.

Q. What was the title of it, do you recollect?

A. I really cannot say. It was an Address to the People, as far as I recollect.

Q. Did it say any thing about taking up arms?

A. I cannot be clear.

Q. Did it say any thing about rights?

A I really cannot say that; I have forgot.

Q. Do you recollect any thing of what was at the bottom of it?

A. No. I only heard it once read, and I really cannot say any thing about it; but it was an Address to the People.

Lord President.—Who did it appear to come from, or to be issued by?

A. Some committee, I think; but I do not recollect.

Mr Solicitor-General.—You heard it read.

A. Yes.

Q. Did it say any thing about desisting from work?

A. I really am not clear of that.

Q. Did you give over work after that?

A. Yes; but not in consequence of that.

Q. Did you give over work after that Address appeared?

A. No, I went to work as usual on the Monday following.

Q. That was the day after.

A. Yes.

Q. And how long did you continue?

A. I went to work between five and six in the morning, and continued at work till between seven and eight that same evening.

Q. And after between seven and eight you stopped, did you?

A. Yes.

Q. And worked no more that day?

A. No more that day, as far as I recollect.

Q. Had you occasion to observe how people were working at that time?

A. There was a lad came into the shop and told me the rest of the shops were not working, and I dropped on occasion of that; he came in about eight o'clock, and told me the rest were all struck, and I stopped in consequence of that.

Q. Can you say, from your observation, whether, after that Address appeared, there was any difference in the state of working among the people?

A. Yes, there was a difference—people appeared to have relaxed.

Q. Who had that Address you have been speaking of?

A. William Nemo had it.

Q. And he read it to you?

A. I think so.

Q. Did you ever see it afterwards?

A. I saw one afterwards posted up, but I did not read it; it appeared to be the same Address.

Cross-examined by Mr Murray.

Q. Did you see the prisoner Wilson on Wednesday?

A. Yes.

Q. What was he doing?

A. I think he was at his business like as ordinary.

Re-examined by Mr Solicitor-General.

Q. Did you see the prisoner upon Wednesday?

A. Yes.

Q. Did you see him working?

A. I cannot be clear on that; but he was standing at his bench like as ordinary.

Q. Did you see him at work on the Wednesday?

A. I cannot say; he was standing at his bench like as ordinary.

Mr Murray.—You have no distinct recollection whether

he was working; but as I understand you, to the best of your recollection, he was?

A. No.

Lord President.—He said that he was working in his ordinary way; but then he said he was standing at his bench, but he could not say whether he was working or not.

A. I think he was working, but I really cannot positively say. I cannot say whether he was really working, or standing at the bench.

Lord President.—You would have thought he had been working at any other ordinary time?

A. He was rather backward, and I really cannot say positively.

Mr Drummond.—We will read the Address.

The Address was read as follows:

Address to the Inhabitants of Great Britain and Ireland.

Friends and Countrymen,—Roused from that torpid state into which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and to proclaim to the world the real motives, which, (if not misrepresented by designing men, would have united all ranks,) have reduced us to take up arms, for the redress of our common grievances. The numerous public meetings held throughout the country, have demonstrated to you that the interest of all classes are the same; that the protection of the life and property of the rich man, is the interest of the poor man; and in return, it is the interest of the rich to protect the poor fron the iron grasp of despotism, for when its victims are exhausted in the lower circles, there is no assurance but that its ravages will be continued in the upper; for once set in motion, it will continue to move till a succession of victims fall. Our principles are few, and founded on the basis of our constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt;

equality of rights (not of property) is the object for which we contend, and which we consider as the only security for our liberties and lives. Let us shew to the world that we are not that lawless sanguinary rabble which our oppressors would persuade the higher circles we are, but a brave and generous people determined to be free; Liberty or Death, is our motto; and we have sworn to return home in triumph, or return no more. Soldiers! shall you, countrymen, bound by the sacred obligation of an oath to defend your country and your king from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of military despotism, to the unrelenting orders of a cruel faction, those feelings which you hold in common with the rest of mankind? Soldiers! turn your eyes towards Spain, and there behold the happy effects resulting from the union of soldiers and citizens. Look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and the soldiery, happily accomplished without bloodshed; and shall you, who taught those soldiers to fight the battles of liberty, refuse to fight those of your own country? Forbid it, Heaven! Come forward then at once, and free your country and your king from the power of those that have held them too too long in thraldom. Friends and countrymen! the eventful period has now arrived when the services of all will be required for the forwarding of an object so universally wished, and so absolutely necessary. Come forward then, and assist those who have begun in the completion of so arduous a task, and support the laudable efforts which we are about to make, to replace to Britons those rights consecrated to them by Magna Charta and the Bill of Rights, and sweep from our shores that corruption which has degraded us below the dignity of man. Owing to the misrepresentations which have gone abroad with regard to our intentions, we think it indispensably necessary to declare inviolable all public and private property; and we hereby call upon all justices of the peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may

receive that punishment which such violation of justice demands. In the present state of affairs, and during the continuation of so momentous a struggle, we earnestly request of all to desist from their labour from and after this day, the first of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguish the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed. We therefore recommend to the proprietors of public works, and all others, to stop the one and shut up the other until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to. And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and to restore its inhabitants to their native dignity, we shall consider them as traitors to their country and enemies to their king, and treat them as such.—By order of the Committee of Organization for forming a Provisional Government. Glasgow, 1st April, 1820.—Britons! God, justice, the wishes of all good men, are with us; join together and make it one cause, and the nations of the earth shall hail the day when the standard of liberty shall be raised on its native soil.

ARCHIBALD BROWNLEE—*sworn.*

Examined by Mr Serjeant Hullock.

Q. What are you?

A. A clock-maker.

Q. Did you ever occupy yourself in the making of stockings, or any thing of that sort?

A. Sometimes.

Q. When the other trade was slack probably?

A. Just for a bit of amusement.

Q. Do you know James Wilson of Strathaven?

A. Yes.

Q. Did you ever work at his house upon any stocking frame, or any machine he had?

A. Yes, I have occasionally.

Q. How long have you resided at Strathaven?

A. Ten or twelve years.

Q. Do you remember the time of the marching of some people, from Strathaven towards Glasgow, in April last?

A. Yes, I do.

Q. Did you see them march out?

A. No, I did not.

Q. But you remember the day probably?

A. I do.

Q. What day of the week was it, and what day of the month—was it on a Thursday?

A. Yes, I believe it was, but the day of the month I do not know.

Q. Did you see at Strathaven, any Address or Proclamation posted against any of the walls there?

A. Yes.

Q. When did you first see that?

A. Upon the Sunday before they took arms.

Q. Did you see more than one?

A. Yes, I saw two or three?

Q. At different places, were they?

A. Yes.

Q. At different parts of the town?

A. Yes, three I think, two or three.

Q. Did you read them?

A. I read one of them.

Q. What did it say, about things or persons, do you remember?

A. No, I do not remember the half of it.

Q. Do you remember a quarter of it?

A. No, I do not; I do not remember the language, but I would know it if I saw it.

Q. Look at that—is that the same? (*the paper produced by Mr Hardie.*)

A. I think it is the same, but I am not very sure.

Q. Did the Address which you saw against the walls at Strathaven, begin as this does?

A. I think so.

Q. Look at it, (*producing another hand-bill.*)

Mr Murray.—I apprehend that cannot be shewn him unless it is in evidence.

Mr Serjeant Hullock.—The way I propose this in evidence, is that the witness has stated he saw several placards of the same description at Strathaven; and he stated if he saw one he should know whether it was the same or not; now I apprehend it is immaterial whether the document is evidence or not, because the question is, whether he saw an Address of this sort upon the walls?

Lord Chief Baron Shepherd.—Cannot he say whether he saw a paper of that sort on the walls?

Mr Serjeant Hullock.—A certain portion of the other is torn off, but, if the Court thinks it objectionable, I had rather abandon it than argue it, because it is wasting time.

Lord President.—He thinks it began in that way?

Mr Serjeant Hullock.—Did the Address you saw begin as that does?

A. It did.

Q. Read as far as you recollect it being the same.

A. I think the first part of it is the same.

Q. Read.

A. The two or three first lines of it are the same.

Q. Read.

A. "Roused from that torpid state, in which we have have been sunk for so many years, we are at length,"—it began in that way.

Q. It did not end there?

A. No, I cannot say how far; I paid very little attention to it.

Q. You think it began in that way?

A. I think so, but I paid very little attention to it.

Q. Do you see those words, "our principles are few?" were those words in the Address, or any of them that you saw at Strathaven?

A. I do not know, I paid no attention to them?

Q. You sometimes amuse yourself by working at Mr Wilson's?

A. I do.

Q. You are in the habit of seeing him there then?

A. Every day when he is at home.

Q. Do you remember working at Mr Wilson's house immediately before they took up arms?

A. On the Wednesday before.

Q. Did you see any company at his house that day?

A. Nothing but what was usual; there were a great number of people going and coming, but it was the custom of the house; there were always a great number of people coming to the house.

Q. And they were so on that day?

A. Yes.

Q. What might the nature of their business be?

A. They were just such people as used to go about the house; he was a man that worked with the files, and in the hardware line.

Q. Did he work at gun-flints, and gun-locks, and things of that sort?

A. Yes, very frequently.

Q. Had he a vice?

A. Yes, and he soldered white iron and tin, and things of that sort.

Q. He used to occupy himself that way, did he?

A He did.

Q. Was that his business?

A. He was a stocking-maker by business, but he did this, and made his bread by it occasionally.

Q. Had he any arms in the house that you know of?

A. He had an old pistol, I do not know whether it was in his house at that time or not; he was repairing a pistol some days before that for a man in the town, but I do not think it was in a state that it would have fired.

Q. He was repairing one?

A. Yes, he had been repairing one.

Q. Had he any sword which you knew of?

A. He had an old sword, which he cut in two on the Tuesday or Wednesday.

Q. Did he sharpen it when it was cut?

A. He sharpened the point of one of the ends?

Q. How long had he had that sword, think you? was it a family piece?

A. I do not know; I never saw it in the house that I know of.

Q. Do you remember, on Wednesday afternoon, any person coming to Mr Wilson's, with any message of any sort?

A. I did not see any person; I think I recollect some person calling, and I heard him—overheard him, he was not in the same apartment with me.

Q. Did you hear Wilson's answer?

A. No, I heard him say it was a wet night, he could not go.

Q. Did you hear what the message was to him, and did you hear what Wilson said in reply to him?

A. No, I did not hear; I could not say what the words were, nor the substance.

Q. You heard him say it was a wet night, and he could not go?

A. Yes.

Q. Did not you hear what the message was?

A. No, he was to go somewhere up the town.

Q. For what purpose?

A. He was to go to see some person.

Q. What person was that that he was to go to see; where did the man come from?

A. I could not say; I do not recollect what it was; I could not make sense of it.

Q. What, did the man say he was to go somewhere up the town?

A. Yes, to see some person in the town; but whether it was a townsman or another person, I cannot say; he was often sent for in that way.

Q. His being often sent for was no reason you should shut your ear at that time?

A. I did not pay any attention to it.

Q. Whom was he to go to see? you could hear that, and you heard him say it was a wet night?

A. Yes.

Q. Do you know a person of the name of William Allan?

A. Yes.

Q. Where does he live?

A. On Ball-Green.

Q. Was any thing said at that time by the person who was addressing Wilson, about William Allan of Ball-Green?

A. There was something said about William Allan that day, but I cannot say what it was.

Q. Was there any thing said about William Allan at this conversation?

A. No, I do not think there was at that time, but I was told after.

Q. You do not think there was any thing about William Allan at that time?

A. No.

Q. When was the talk about William Allan of Ball-Green.

A. Some days after I was told he had been sent for.

Q. You say that Wilson excused himself on account of the wet night?

A. He did.

Q. Did he not go out after that?

A. When I came out into the kitchen he was out.

Q. You were in the adjoining room?

A. Yes.

Q. And when you came out into the kitchen where this conversation had taken place, he was out of the house?

A. Yes, at least he was not in the kitchen.

Q. Did he come back while you were there?

A. No.

Q. Did not you see him after that before the turn out?

A. No, I never did.

Q. And you did not see him turn out the next day?

A. No, I did not.

Q. You say that you saw Wilson sharpen the sword, how did he sharpen it?

A. By cutting the corners off and making a point.

Q. How did he sharpen it after it was cut?

A. It was cut off with a chisel, and that brought it to a point.

Q. Then did he sharpen it after that?

A. No other way, only by pointing it.

Mr Drummond.—Now the declaration.

Mr Monteith.—My Lord, as my Learned Friend is going to put in evidence the declaration of the prisoner, I think it right to call your Lordship's attention to what was stated by the first witness as to that declaration. Mr Aiton stated, in a variety of different forms, that he had represented to the prisoner "that it would be better for him to be candid;" he acknowledged having said to the prisoner, that if he had been placed in the same situation, he would tell the truth, and the whole truth; and that "it would be better for the prisoner to tell the whole truth," but warning him that it was not necessary for him to state any thing to criminate himself. Now, my Lord, I do not pretend to deny that a declaration of a prisoner is good evidence, provided the taking of it be attended with all that caution which the law regards with so much jealousy. There are so many motives that may induce a person to criminate himself against the truth, that it is quite necessary to guard with all possible caution a declaration of a prisoner in such circumstances. Your Lordship knows, that in Scotland this is carried so far, that a confession is not held evidence *per se*; and the principle on which this proceeds is, that there are a variety of circumstances which may lead a prisoner, under examination before a magistrate, to state what is not consistent with the truth against himself.

My Lord, what I am now stating is also agreeable to the English law, if I may rely upon the authority of Mr Phillips, who lays it down in the broadest terms. He says, in page 86, talking of the confession of a prisoner, "But the confession must be voluntary, not obtained by improper influence, nor drawn from the prisoner by means of a threat or promise."

Lord President.—What edition do you quote from?

Mr Monteith.—The third edition. My Lord, it is here stated, that however slight the promise or threat may

have been, a confession so obtained cannot be received in evidence, on account of the uncertainty and doubt whether it was not made rather from a motive of fear or of interest, than from a sense of guilt. Now, my Lord, it may perhaps be said, that Mr Aiton neither made a promise nor a threat; but your Lordship, in estimating the value or weight of the expressions used, must take into your consideration the situation of the person who makes the threat or promise. My Lord, this was not a private individual, but an official person—a magistrate appointed by the Government for the detection of these treasonable practices which were going on, and he, in that situation, being a person in search of evidence in such crimes, tells the prisoner it will be better for him to tell the whole truth. Is it possible to say it is better for a prisoner to tell the truth, that he has been guilty of High Treason, in order that his confession may go to the Jury as evidence of High Treason against himself? If his declaration was to be sent to a Jury, could it be fair to give him such advice? Therefore, there must have been some other view in the mind of this gentleman, or, at least, there might have been some other view in his mind; and if he said it is better for you to tell the truth, the prisoner must have thought, if I tell all the circumstances, I shall be recommended to a pardon, or it may so far palliate the offence, that this may not be brought in evidence against me, but only be used to discover other persons' guilt, or to lead to other evidence, and not be laid before the Jury as evidence against myself. It is quite clear, (and that is sufficient for me), that the words of the magistrate, taken in connexion with his situation, and with what is a rational interpretation of these words in the mind of the prisoner, must be held equivalent to a promise, and, as Phillips says, however slight such promise may be, it is sufficient, I apprehend, your Lordships cannot receive this declaration. The law is stated in similar terms in the case of Thomas, in Leach's Crown Cases, (Case 265.) My Lord, we have done all we can to procure this book—it is not to be had in the city of Glasgow; and, therefore,

I must rest on the single authority of Mr Phillips, corroborated by the universal practice in English Courts, where I have repeatedly heard it put by the Judge, whether the prisoner was told that it would be better for him to confess? I apprehend, when your Lordship takes into consideration the circumstances of the prisoner, the circumstances of the time when the examination was taken, and the circumstances of the person by whom it was taken, your Lordship will not hesitate to determine that this declaration cannot be received.

Mr Murray.—I rise in support of the same objection; but it has been so ably stated by my Learned Friend, that, in opening the objection, I do not conceive it necessary to take up much more of your Lordship's time. I do not feel myself qualified to argue any point of English practice, which this is, though it has become part of the law of Scotland, by the statute of Queen Anne. This is perhaps the only point connected with this trial which I have heard decided in a Court in England. I recollect being present at a Western Circuit, where a witness was examined before Mr Baron Thomson, a very eminent judge, as to a person having confessed he had burnt his master's hay-stack. The Judge said to the master, "Did not you say it would be better for him to tell the truth?"—and he said "Yes." It appeared to form no part of the original evidence, but to have been brought out by this question from the Judge; and he told the Jury that this evidence of a confession could not be received. What is this case?—Nothing is further from my intention than to impute any blame to the person; and I do not mean to say any thing invidious to the public officers. Persons in that station ought to be protected when they act properly, at the same time that prisoners should have the advantage of objections in point of law. Here is this prisoner brought before a magistrate, on a charge new to the inhabitants of this country—on a charge of High Treason,—a charge that would affect his mind more than an accusation of any offence usual in the country, and in that state of perturbation—which would be as great as what persons

were in when they were accused of witchcraft formerly—and in that situation, he is told, you had better be candid.

Lord President.—The words were, that he told him that he was at liberty to say what he thought proper, but that his opinion was, the more candid he was, the better it would be for himself. If I were in the same situation, I would be candid, and speak explicitly.

Mr Murray.—Could there be any thing so strong as a magistrate saying, If I was in the same situation I would do so? The prisoner might think himself in safety, if he did what the magistrate said he would do himself. Would not the feeling in any person's mind brought before a magistrate under these circumstances be, that he would be committed to prison if he did not give an answer affirmative to every question? Therefore, taking the true meaning of it, it was much stronger than I stated in the case before Mr Baron Thomson. It was stated in a manner to make the strongest impression on the prisoner, that there was a wise and safe course for him to follow, but if he did not follow it, the alternative was, that it would be the magistrate's duty to commit me to prison. What must be the effect of that on any person's mind?—have not confessions been made of things totally impossible?—are there not records full of confessions that persons have been guilty of witchcraft, and had dealings with the devil?—Yet persons were told it was best for them to be candid, and they confessed to matters which, in the present age, no jury would believe. I refer to these cases, to shew the effect of terror on the human mind. When a person is accused, the idea of escaping punishment is sufficient to induce him to a confession, whether true or false is out of the question; it leads them tomake a statement, which, made under such circumstances, cannot be brought against him in a court of justice.

In East's Pleas of the Crown, vol. III. page 659, which is referred to by Mr Phillips, and which I believe is a book of considerable authority in England, I find this passage—"As to what shall be considered a threat or promise, saying to the prisoner that it would be worse for him if he did not confess, or that it would be better for him if he did, is sufficient to exclude the confession, according to constant

experience." I submit this as a matter of common and daily usage in England, and it rather seemed to be the object of the Judge, acting as counsel for the prisoner, in the case I mentioned, to take the witness off his guard, and put the question in such a manner as would cast the evidence which had been given of a confession. I recollect the impression that made on my mind, because it was so different from what I had been accustomed to in this country. The reason which has been given by Mr Phillips for the rule established in England is this:—"The confession must be voluntary, not obtained by improper influence, nor drawn from the prisoner by means of a threat or promise; for, however slight the promise or threat may have been, a confession so obtained cannot be received in evidence, on account of the uncertainity and doubt whether it was not made rather from a motive of fear or of interest, than from a sense of guilt." What was said here was calculated to act on the fears of the prisoner, and dispose him to say what, if that advice had not been held out to him, he would not have said. I therefore maintain that this declaration cannot be read.

Mr Solicitor-General.—My Lords, I shall submit to your Lordships but one or two observations, in answer to the argument which you have now heard. Upon the general point, whether, by the law of England, the declaration of a party taken before a magistrate of police, who is entitled to take such declaration, is or is not evidence to be sent to the Jury and to be considered as of infinite weight in the case;—that, I say, is a question upon which it is impossible for your Lordships to doubt, or for any lawyer to state even the shadow of an argument.

Lord President.—Certainly;—that is not the argument.

Mr Solicitor-General.—The question then before your Lordships is, whether the declaration now proposed to be read has been taken in such circumstances as to prevent it from being presented to the Jury; and, if I understand the argument aright, it is this, that it is a declaration given in consequence of a promise, or an inducement, and therefore not a declaration voluntarily and freely given, which

is alone the proper character of a declaration to be presented to a Jury. Now, that is a question of fact, and it is a question which your Lordships are able to resolve by looking at the notes of the evidence which you have before you; but it is necessary that your Lordships should consider it with reference to the first and to the second delarations, because there are in this case two declarations. Now, I shall say a word as to the second declaration, to shew its effect on the first one.

Lord President.—That has not been offered to be read, and Mr Aiton did not swear to it,—he only spoke to one—confine yourself to that; the second may be admissible, and the first not; or the first admissible, and the second not

Mr Solicitor-General.—I shall say a word or two upon that point;—and I shall say, these two declarations are inseparably connected. I shall explain to your Lordships the ground on which they bear on one another. I may be right or wrong, but the Court will permit me to explain myself.

Lord Chief Baron Shepherd.—The declaration produced, I understand, is the first.

Lord President.—One was taken before he was committed, and the other was taken in Bridewell, after he was committed.

Lord Chief Commissioner Adam.—We can consider nothing but the declaration now offered. The Solicitor-General may explain it in his argument.

Mr Solicitor-General.—Your Lordships will consider what I have to say. The question is, whether there is any thing in the evidence from which it can be inferred that any thing in the nature of persuasion or threatening—any inducement—was held out to the prisoner, in order to make him give any declaration at all, or to make him give a declaration of any particular kind unfavourable to himself? I say that is a question of fact; and I state to your Lordships confidently, that on looking at the evidence, of which your Lordships have notes, there is not any thing in the slightest degree to bring the declaration under any one of those disqualifications which are stated in the books, and referred to, and I shall explain this in a moment. I admit

expressly, that if it shall appear that there is any inducement clearly and expressly held out—any thing in the nature of an inducement or persuasion,—a declaration given under such circumstances cannot be looked at; and if there had appeared to me any thing of that kind here, it would not have been offered. It is said in East, "As to what shall be considered as a threat or promise, saying to the prisoner that it would be worse for him if he did not confess, or that it would be better for him if he did, is sufficient to exclude the confession." Now, he was brought before the Sheriff-Substitute, and on looking at the evidence, your Lordships will see that he was told distinctly, in a way consistent with the uniform practice of that Officer, that he need not criminate himself; and he was told further, that if he was to speak, that it was better for him to be candid. Now, is there any mortal that can doubt that it is infinitely better for every man in that situation to be candid? He may hold his tongue,—that is, in common sense, being candid—that he will not say one word; but your Lordships know well—your Lordships, who are conversant with the Criminal Court, know well—that when prisoners are subjected to examination in the ordinary way, so far from being candid, or so far from holding their tongues, they frequently give a tissue of falsehood almost from beginning to end. Now, mark the danger of such a course. I say, that the Public Officer was quite correct in stating that he ought to be candid, in that view of the matter; because, unquestionably, if it should appear—and I am not entitled to say what is in that declaration—that the prisoner has given a series of misstatements, and false statements—what is the conclusion but that he turns out to be contradicted in the evidence, and his declaration then weighs infinitely against him. Therefore, I say, that in looking to what was stated by the Public Officer, he was put on his guard in the same way as every criminal in Scotland is put on his guard. and he gave his declaration under that caution. But, then, your Lordships will observe, that the first declaration does not depend for its efficacy merely upon the evidence of Mr Aiton, and it is to that point that I referred in the com-

mencement of what I stated, in saying that the two declarations were connected; because the first declaration was read over and adhered to, and a second declaration given in reference to it before another Public Officer, namely, Mr Pringle.

Lord President.—We have no evidence that it was read over to him.

Mr Drummond.—Yes, my Lord; I expressly put the question.

Mr Solicitor-General.—The first was read over to him; he adhered to it, and he gave a second declaration in continuance of it, and in reference to it.

Now, therefore, if the fact had been as is alleged for the prisoner, and if such a misconception, groundless as I maintain it to be, as founded upon any thing that was said by Mr Aiton; but if there had been that misconception—if the fact had been, that the prisoner was induced to give his first declaration in consequence of any thing said to him, or to give that confession, if it is a confession, it was his duty to state that fact before Mr Pringle, before whom he gave his second delaration. It was quite competent for him to say,—and your Lordships cannot suppose it possible that a person in his situation would not have said it, if the fact was so,—that he gave that declaration under a misconception, under a promise, and under an influence. This statemen twould have appeared in the second declaration, but no statement of that kind appears in it; the first declaration is repeated in the presence of Mr Pringle, and regularly adhered to, and clear it is that the terms made the foundation of the argument, with reference to what passed before Mr Aiton, are not stated to occur before Mr Pringle. Upon these grounds, I submit, the objection has not been made out, that there is not a pretence to allege that any thing was stated to induce him to make that declaration; but, it is said, it is possible a misconception might arise in the prisoner's mind from these words; there is not the slightest grounds for supposing such a misconception did exist, on the contrary, it is excluded by the second examination

is then committed to prison—no new offence arises, and he is brought up again, as is very usual in this country, I do not know whether it is so in England. Those who act for the Crown wish to get more out of him. Is a distinction to be made between the different magistrates employed by the Crown? Where they act by legal authority, they must be considered as one person, however numerous. It does not matter, therefore, whether Mr Aiton sat again, or Mr Pringle. There was a magistrate invested with authority, who held out such an inducement as might act on the fears of a person accused, and reduced what he said into writing. Both magistrates are exactly the same.

Mr Solicitor-General.—Not on the part of the Crown—that is a mistake.

Mr Murray.—Certainly they act under the public authority; and that public authority is one and indivisible under the law of the state; they were not acting as individuals, but acting as the Magistrates of the Government. In these circumstances, there is held out an inducement. Suppose there had been a promise of any sum of money, or security against punishment,—because I am entitled to leave the particular species *facti* out of view,—consider it as a general question,—if the prisoner was told, if you do this you will gain an advantage, or you shall have L. 500 or L.1000; if he is first examined on that, and is called up again to the same transactions, then the same inducement must have operated in both cases, and he was tied down by it, because he must feel, if I deviate, I am losing all the advantages I was to gain by what I have done, and I must make out a statement, more or less consistent with that already obtained from me. Confessions by prisoners are like a series of deeds; if a man makes a number of wills or settlements, the Court must construe them as one deed; a prisoner cannot give his confession in separate deeds, and he must have the strongest inducement to make out the statement he has given before into one consistent whole. At first he has an inducement—he makes a declaration—that declaration has been set aside, as obtained on an improper inducement—he does not know that will be the case—he is in prison at the time—he

is committed on the same warrant, and, on the second examination, he is under the same inducement as at first; accordingly, the Solicitor-General seemed to state they were one and the same—they are one and indivisible. I had not an opportunity of replying, or I would have submitted that.

Mr Solicitor-General.—That admission was not made.

Mr Murray.—They were said to be one and inseparable, being one and inseparable, which is something different from one and indivisible, though I do not comprehend what this distinction is; but supposing there is some such distinction, if they are inseparable, how can your Lordships take away the one and leave the other? If the second one is part of the first, how can you reject the first, and retain the second?

Lord President.—We can separate the declarations, but the difficulty is to separate the inducement on the mind; he only adheres to the first; now, if it is not read, we do not know what it is; but the question is, whether the inducement runs through the whole of it.

Mr Monteith.—Will your Lordship allow me to mention a passage, which shews it is the duty of the Magistrate to warn the individual—if your Lordship will allow Mr Murray to read that passage.

Lord Chief Baron Shepherd. That depends very much upon circumstances; that is much too large, as applying to all cases, it might happen that the first might be rejected, and the second might be clearly admissible; I am not saying it would be so here.

Mr Murray.—If it was stated to the prisoner at the time that his first declaration was not effectual, it might be separated, but, while he goes on, without any such warning, he has the same inducement to make the second declaration, which makes it inseparable from the first. The passage in East is this: (p. 658) "Buller Judge admitted the general rule, with some qualification, by observing, that there must be very strong evidence of an explicit warning by the magistrate, not to rely on any expected favour on that account, and it ought most clearly to appear that the prisoner thoroughly understood such warning, before his subsequent confession could be given in evidence."

Lord Chief Baron Shepherd.—That was in a case in which there had been a promise. I am not saying how it would apply to this; but that case was where there had been a promise, that the party should not be prosecuted, if he would confess; then Justice Buller said, that promise must be well revoked by the magistrate before he takes a second declaration.

Mr Murray.—I submit here there was no sort of warning, there was the same inducement operating on the mind of the prisoner; although I felt it my duty to make this objection, I do not know how far any of these declarations bear on this trial, for I have not been allowed to see them.

Lord President.—They suppose it will be evidence in their favour, and you oppose it.

Mr Serjeant Hullock.—I shall trouble the Court shortly in support of this evidence; and I am free to confess the way the case has been argued surprises me very much, because the last authority shews there is no authority for about nine-tenths of what has been stated, as I understood my Learned Friend, when he identified the magistrates together, it was quite impossible there could be a second declaration, whereas Mr Justice Buller shews the admissibility of a second declaration depends on circumstances. But we will go by steps. I do not mean to controvert, that where there is one confession or declaration, the whole must be receivable in evidence, or fall to the ground—I do not mean to contend, for a moment, that part of a declaration or confession can be received in evidence, provided another part be inadmissible; but I do mean to deny, distinctly and unequivocally, that there is any rule or authority which precludes the admissibility of a second confession or declaration, provided the Court should be of opinion, that, at the time that second declaration was emitted, the party was quite aware, and was warned, that he was at liberty to say just what he liked on that occasion. I aver distinctly, that there is no principle of the law of England, with which I am acquainted, which precluded a declaration under such circumstances. The dictum of East is not the law of the land.—East is like all other writers, who, as far as he gives authorities, is entitled to weight. But we must go

by steps. The allegation is, that a second declaration cannot be given in evidence, because the first is inadmissible; and it is taken for granted that the same principle of action, the same motive, of either fear or of hope, which actuated and influenced the individual, at the time he gave the first, is continued so far to be presumed to operate, as to preclude the matter from being given in evidence; if that be so, then no second declaration could be given in evidence; why? because you shew the first is inadmissible, inasmuch as a promise was made, or a threat held out. Now, let us see the circumstances of this declaration, as stated by the evidence of Mr Pringle, who, I understand, according to the law of this country, is such an individual as is in law authorized to take that deposition. That officer states that he apprized the party of his situation; that he need not say any thing unless he liked; was at full liberty to do or say what he liked. Then what has Mr Pringle's conduct to do with what was said by Mr Aiton? because I think no person will be called on to answer the learned gentleman, when he says, one magistrate must be bound by what another does; that they are like a body corporate. I apprehend, what one magistrate does may bind him, but it does not prevent any other officer of concurrent jurisdiction from proceeding. And with respect to considering declarations as wills or deeds, that they are a bargain and sale to be enrolled, and constitute one title, I never heard that; but if that be so, the cases I am about to refer to cannot be good law. What is the case referred to voluntary confession before magistrates? "But in one case—where hopes had been holden out to a prisoner to confess, and when brought before a magistrate; in a case of this kind, mentioned by Mr East, where hopes of favour had been given, he refused, unless upon conditions. Buller Judge admitted the general rule, with some qualifications, by observing that there must be very strong evidence of an explicit warning by the magistrate, not to rely on any expected favour on that account, and it ought most clearly to appear that the prisoner thoroughly understood such warning, before his subsequent confession could be given in evidence." That case, therefore, goes thus far, that a subse-

quent confession is admissible, under circumstances. Why then, what are the circumstances under which a subsequent confession can be received? Why, it ought to appear clearly and distinctly that there was an explicit warning by the magistrate. Was there, or was there not, in this case, an explicit warning by Mr Pringle? If the language is at all to be understood, is not the language of Mr Pringle distinct and explicit, that he apprized the person he was at liberty to say what he liked? Then there is another case before Mr Justice Bayley, where it appeared that the prisoner, on being taken into custody, had been told by a person who came to assist the constable, that it would be better for him to confess; but that on his being examined before the committing magistrate, on the following day, he was frequently cautioned by the magistrate to say nothing against himself; a confession under these circumstances, before the magistratre, was held to be clearly admissible—Why? It only comes to the quantum of warning, which was, in point of fact, used by the magistrate; if that be so, then what is the language used to-day; there is no precise formula in which a magistrate is to warrant the prisoner, in common law, and common sense, and common reason; all that is expected is, that the magistrate should apprize the party, at the time he is examined, that he is at liberty to speak or to hold his tongue, that is all.

Now, Sir, there is another case in page 113 of Phillips. "In a third case which may be mentioned on this subject, where the counsel for the prisoner objected to the admissibility of a confession made before the committing magistrate, and offered to prove that the wife of the constable had told the prisoner some days before the commitment, that it would be better for him to confess, Mr Baron Wood over-ruled the objection, and admitted the confession." I do not think that is a case precisely to my argument; because there is no doubt, that if a person who has no authority, a constable, or a person who meets him on the road, tells him so, that is not such a promise or threat as to warrant the rejection of the confession; but the two cases I have referred to, particularly that before Mr Justice Bayley, is deci-

dedly in point- that before Mr Justice Buller shews subsequent declarations may be admitted under circumstances. There was a case before Mr Justice Bayley of Rex *v.* Lingate, at Derby Lent Assizes 1815. "In another case it appeared that the prisoner, on being taken into custody, had been told by a person who came to assist the constable," which is precisely the same as the constable in point of law, "that it would be better for him to confess; but that on his being examined before the committing magistrate on the following day, he was frequently cautioned by the magistrate to say nothing against himself a confession under these circumstances, before the magistrate, was held to be clearly admissible." That is not the case of two confessions, but that is the case of a confession after, in point of fact, a promise had been given, which promise, as was argued there, might be supposed to continue to operate on the mind of the man when he was examined afterwards; but in consequence of the warning which was given by the magistrate afterwards, notwithstanding that promise or that threat used on the way by the assistant of the constable, that was received; and I submit, on the principle on which Mr Justice Buller received the evidence, this is admissible evidence. Was Mr Pringle an authorized officer to take this declaration? was he, or was he not so? If he were so, that must be considered as a substantive important declaration emitted before him under circumstances which precludes all suspicion or apprehension of promise or threat, and it is therefore admissible in point of evidence.

Mr Murray.—I rather wish to explain the nature of the objection I urge; I by no means maintain that what one magistrate does binds another, or that it would not be in the power of one magistrate to put an end to an improper proceeding before another; but I say, where a man is brought before a magistrate for an offence, and a promise made him, and afterwards brought before another, there is a continuance of the same inducement, and both declarations stand on the same authority. The learned Serjeant stated a case—what can be stronger than that case?—It is that where a subsequent magistrate gives a warning, and says you are not bound to declare to this purpose, that

declaration is valid, for the prisoner is told he is not bound by what passed before. That case is, however, the reverse of the present. I examined Mr Pringle particularly as to what was said, and there was certainly nothing of the kind. I examined Mr Pringle most carefully, but there was not one hint of any thing to that effect said by Mr Pringle; but we have a case cited, and we are told, because a constable's man said something to the man to be examined, that is similar. What is the identity of the constable's man with the constable, and then of the constable with the magistrate?—that is a position I will not maintain, though that would be very far beyond my argument; but I say the same inducement continued throughout, and therefore the second declaration, stands before your Lordships on precisely the same authority, and was given from the same motives and inducements as the other.

Lord President.—Gentlemen, the Court entertain the same sense with regard to the admission of the second declaration that they do of the first, and for these reasons, Mr Aiton and Mr Pringle are co-ordinate magistrates; they are both deputies of the same Sheriff; they do not stand in the relation of one of the cases of a constable's assistant, and a magistrate, where what the magistrate said to the prisoner may be supposed to be of greater authority, and to supersede the constable's assistant, who had no authority; but there is another reason that it does not appear to us that Mr Pringle said enough to undo the impression on the prisoner's mind: Mr Aiton told the prisoner just as much as Mr Pringle did—that he need not say any thing at all; but he added, "If I were in your situation, I would be candid, and speak out. Mr Pringle does not undo that inducement, he only repeats the same caution—you are not obliged to say any thing. I was told that, says the prisoner, by Mr Aiton, but I was told to be candid; and accordingly, what happens?—the first declaration is read over, and he adheres to it. Now, therefore, he adheres to the first declaration, and the second; therefore this first declaration is made a part of the second. If it be true that in the first, which we are to take for granted is the present case, he confessed the crime, he confessed it

in the second, under the same inducement; and if what Mr Pringle said on that occasion is sufficient to do away the inducement to the second, it is sufficient to do away the objection to the first.

Mr Solicitor-General.—We have closed the evidence on the part of the Crown.

Lord President.—Mr Murray, what number of witnesses have you to call in exculpation?—because it may be necessary to consider whether we ought not to adjourn. You are to open and sum up, then there is the reply, and then the charge to the Jury, and this is ten o'clock at night. We could finish it, but the question is, whether we had not better adjourn?

Mr Serjeant Hullock.—Whatever your Lordship decides on we will adhere to.

Lord President.—That being the case, you will consult your own convenience, whether you had rather have your opening now, or delay it till to-morrow.

Mr Murray.—I had rather open my case now. We have a great number of witnesses, but then it remains a question, from the course the evidence has taken, what number of those should be examined. We, however, feel that the Trial cannot be concluded without an adjournment.

Lord President.—You had better go on with your opening now; but rest yourself a bit.

Mr Murray.—May it please your Lordship, Gentlemen of the Jury,—If I supposed, Gentlemen, that any interval of time could place me in a state of mind better able to address you on the case that is now before you, I would have availed myself of the indulgence which the Court has offered of allowing me again to speak to you, after some interval of time; but, Gentlemen, so far as it regards myself, from the state of mind in which I have passed these last two days, anxious to retain a variety of points of law which are altogether new to me, and to apply them to such evidence as might be brought forward, I feel that that interval, so far from giving me any advantage, would be only a continuance of the same anxiety; and that I should be doing injustice to the good cause of the prisoner at the bar, if I suffered any personal considerations of comfort or con-

venience to prevent my addressing you now, before you separate, upon the alleged acts of treason which have been brought before you.

It is my duty to attempt to state to you what I conceive to be the law,—imperfectly, perhaps tediously,—all these defects increased by the feeling, that I am discharging a task to which I am unequal. But, Gentlemen, neither your duty nor mine is in every respect chosen. You are obliged, by what you owe to the laws of your country, to sacrifice your time, your ease, and convenience, because the life of a fellow-creature is at issue; and, however painful the duty which you have to fulfil, you are entitled to feel the most perfect confidence, that, leaning, as juries of both countries do, to the side of mercy, you will perform it well. The difficulties of conducting a defence, where every point may be determined by the practice of English Courts, appeared to me so great, that I felt I should do the prisoner injustice if I undertook it. After I had expressed that determination, I was told that the aid of English Counsel could not be obtained by the prisoner; I then felt myself bound to sacrifice every personal consideration, and rather incur the imputation of presumption and rashness, than appear to be guilty of a greater offence, and attach a stain to the profession to which I belong, by refusing the repeated applications of a person in distress.

I would never have attempted to hint at these feelings, if they merely affected me personally, but, so far as they affect the prisoner at the bar, it is my duty to lay them before you. You ought to know he is defended by a Counsel unacquainted with the law under which this trial takes place; that, on the other hand, this state prosecution is conducted against the prisoner with the united aid of all the talents and experience of Crown lawyers from the English as well as the Scotch Bar, employed for months in considering, in arranging, in bringing forward, all the evidence which they could collect;—they seem, certainly, in this case, to have exerted every possible degree of ingenuity to make out the semblance of a case against an individual who has not the means of commanding the same assistance.

But the laws of this country give him a fair trial—he has no right to complain, while he receives that trial before the Jury which I now address, who will consider all these circumstances. Nay, Gentlemen, I must say, that, in some respects, in addressing you, I stand in a worse situation than if I had not been engaged in the practice of the Law of Scotland for some years, and were trained to the legal habits of a different system, to the rules of which I am involuntarily accustomed to resort.

These matters, so far as they affect the humble individual who now speaks to you, are to be thrown out of view; but you are to retain them in view, so far as they affect the prisoner's defence, and your exercise of a function in some degree different from what you have discharged as jurymen on other occasions. On other occasions you have judged according to the law of Scotland, where a prisoner has a great many advantages which he has not by the law of England, even under the law of Treason. According to the law of Scotland, he has an indictment, which contains a distinct and clear statement of every particular fact, which is averred on the part of the prosecutors; that statement must be minutely accurate; the place must be described; if it happens on a road, it must be described where it leads, whereabouts it occurred, in what parish it is. An indictment, as you must know, is thrown out where it can possibly be alleged that it does not give a prisoner full and complete information of all the particulars which are to be proved against him. Gentlemen, the case is very different here; I do not pretend to understand the indictment before you; but with every effort to understand it, attempting, as I best could, to conjecture what it means, I state to you, that it does not enable the prisoner to form the smallest guess what were the particular facts which were to be proved against him upon this trial.

You heard that indictment read—not the whole of it, but you heard all the counts of it read once; but they are repeated under certain other heads, so as to form a great variety of statements. There was some insinuation thrown out, that your time had been taken up unduly by the read-

ing of that indictment. If I was to blame upon that occasion, it is a blame you will impute to me alone, individually, as having improperly wasted your time, but not visit it upon the unfortunate man who has placed me in this situation, to address you. I should be sorry, indeed, if you had not heard it once read, although the noble Lord shall again observe that your time had been taken up with details, "he might almost say unwarrantably," which had not been done elsewhere. What were those details?—they were, that, as the law requires, this man's indictment was read to you,—not read, Gentlemen, according to its full length, because whenever it came to any repetition, I begged the Clerk of Arraigns, from my anxiety not to take up your time unnecessarily, to pass over those repetitions.—Judge now whether I was acting unwarrantably, Gentlemen, in having that indictment read to you? I beg your attention to every clause of that indictment, upon which this poor man is brought before you, upon this volume or dictionary of treason, which has been compiled some how or other to blazon out the little matters given in evidence against him. Good God! after what you have heard, take all the conduct imputed to him, was it necessary, or will it be pretended it was necessary to try him here, to make that detail? I have read indictments in former trials—trials of great importance, pursued with the utmost anxiety, against traitors who conspired against the lives of kings—against those who were conspirators against King William, or who were engaged in plots to attack, assassinate, or seize the persons of his Majesty's predecessors. Take the case of Layer, in 1722. Was there an indictment against him of one-tenth part of the length of that which has been brought against that poor individual from Strathaven?—It was not, (I speak under the correction of the Court,) not a twentieth part; I might say not the fiftieth part of the length. I have read many indictments against state criminals, who were accused of great crimes to the state, extending over a long series of time, involving a variety of transactions connected with conspiracies abroad, and in this country, and not one of them approach in length to this. I do not believe there

ever was known in England an indictment of the same length, because I observe, that in the trial which took place a very few years ago, in England, (I mean the trial of Watson,) there are great complaints of the length of that indictment, though it is not so long as this. These complaints were stated by the learned counsel in those trials, in language somewhat stronger than what a person so little used to English practice as I am, would otherwise have ventured to use. Mr Wetherell observed, Watson's Trial, vol. 2d, p. 176,) "We are now arrived at the middle of the fifth day, in the trial of an indictment for treason, of the most extraordinary description which ever occurred in this country; of such a description, that I cannot fail to say we shall never see another of the same—a trial, which, in the mere statement and narrative of the facts and circumstances composing the imputed crime, has run out into a length absolutely unexampled—a trial, founded upon a record which has no precedent in the Crown Office of his Majesty—a record which presents, not one or two strong and clear facts, leading to one or two clear results and deductions of the law, but which contains, as you will perceive from what I am now spreading out before you, a volume of small facts and circumstances, out of which is to be laboriously wrought,—and, as I contend, illegally wrought,—a conclusion of constructive and accumulative treason—a record (for I will state what I think of it), which the Law Officers of the Crown ought not to have put upon the file of the Court—a record, in its form so new and unprecedented, that his Majesty's Attorney-General, in his opening, as I understood him, seemed, to me at least, to think it improper; for, unless I have mistaken his language, he seemed to allow, that several of the Treasons alleged need not have been introduced upon the face of it; I do not say in terms that admission was made, but it was virtually and in substance made."

Do not suppose, Gentlemen of the Jury, that I mean to adopt, or in any way to comment on any thing relative to that trial; but I say that that appears to be considered as fair subject of commentary in that case, and I presume it is here. The indictment which was made in that case consisted of fourteen counts, and is said to have been of a length alto-

gether unexampled, and the matters in it were of the most varied kinds,—conspiracies to destroy the barracks—to seduce the soldiers in London—to take possession of the Tower —to seize the Bank,—a great variety of crimes that were alleged, all of which were more or less supported by proof, and therefore all of which might occasion a greater length of statement and indictment than would otherwise be necessary.

But was all the statement that you have heard necessary here? Is there any part of it which apprizes the prisoner of the nature of the evidence to be brought, or could any document be proved more likely to perplex and mislead him? There is, in the first place, a count, under the head of compassing and imagining the death of the King. The prisoner is accused in another count of treason, in conspiring to devise plans to subvert the Constitution—that you heard at length. I ask you, Gentlemen, where is the evidence of any thing, upon the part of the prisoner at the bar, pointing at a conspiracy to subvert the Constitution of the country? where is there any thing proved against him, like a dislike to the Constitution of the country?—any thing short of the most implicit admiration and attachment? What happens on the particular morning will be afterwards considered. But, Gentlemen, it was not from want of an attempt on the part of the Crown to prove something of a previous dislike to, if not a conspiracy against, the Constitution of the country. They did lead evidence that persons met at his house previous to the month of January; that they took in certain newspapers, with which I do not pretend to be particularly acquainted—they were said to be the Black Dwarf, or the Black Book, as some witnesses called it, the Manchester Observer, and the Spirit of the Union. The Learned Gentlemen thought they had proved something very conclusive when they got that; they found that this was continued down to some time after the 10th of January,—he is tried for an offence committed in April; they had the means of continuing their proof further down, and they are obliged to stop there, and there is not a syllable to carry it further down. This is one of the means taken to prove treason in this trial. What intimation had the prisoner that, when he was brought before you

to-day for matters charged in this indictment on the 1st of April, evidence was led of people meeting at his house on the 1st of January, and ceasing afterwards to meet? It is to affect him on a trial for his life, that at that time there had been certain newspapers read, which were afterwards entirely given up.

Is this the construction your fair and honest minds are to put on the matter? What do you know of these newspapers?—there is evidence that they were read by the prisoner, and other persons who are not accused of this crime. What is the attempt that the Crown are making?—to influence your minds by some prejudice which it is supposed you may have against these newspapers, and that the person who reads them is to be considered less true and loyal than another. I am not acquainted with these newspapers; I am not able to defend him upon them; they may be the worst or the best newspapers in the kingdom. You have no evidence that there ever was any thing contained in those newspapers in the smallest degree wrong. Here, at least, you must look upon the prisoner as an innocent and an injured man, long kept in prison, and now brought here to answer a charge, that people, in the month of January, read some newspapers at his house, which I presume the Gentlemen on the other side do not approve of. Suppose they do not, the reading of them was given up in January. That might remove their displeasure. I have heard of no law to prohibit those newspapers. If they did wrong in reading what the prosecutors dislike, could they do more to gain their favour than give them up. That does not satisfy my Learned Friends; the same unrelenting industry prosecutes the matter here; and it is brought in evidence, that he, and other persons not charged here with any offence, subscribed for newspapers, met at his house, and read them. There is a laborious effort to prove what at one time seemed given up; and reading newspapers during the reign of the last King, is their proof that the prisoner was guilty of treason against our present Sovereign. Can there be doubt, that if they could have found a single newspaper—a single pamphlet received into his house since the 29th of January, which they considered disaffected, that

would have been much better evidence than what is said to have passed in his house before. What will satisfy the Learned Gentlemen? The abandonment of these newspapers has no effect, and what he does on the 6th of April is still to be connected with the accidental readings that took place in his house in the month of January, but which were relinquished before the 20th of January. If this were a case where there was an inquiry into the most trifling matter with regard to the character of a person, whether he was to obtain some favour or situation, I think it would be severe and rigid to take it into view. But to attempt to make any man a traitor on such evidence, is a thing unprecedented before. I leave it to your minds and hearts to dispose of it.

The production of such evidence is thought no waste of your time, though I am said to have wasted your time unwarrantably, when I asked for one reading of the indictment brought against this man. There is no waste of time in proving against him the accidental reading of newspapers months before, afterwards relinquished, without a tittle of evidence to shew they contained a single word—a single paragraph, that could affect the minds of any man against the government of the country.

The second charge is that of conspiring to levy war to subvert the Constitution; the third, publishing and posting up a treasonable Address to the Inhabitants of Great Britain and Ireland, to excite the soldiers of the King, and other subjects, to rebellion. That was one of the great charges—one of the prominent charges, that the prisoner printed, published, and posted up a treasonable Address to the Inhabitants of Great Britain and Ireland, to excite the soldiers of the King, and other subjects, to rebellion.

That is a serious charge. Upon that Address, which is stated in the indictment, I may afterwards have occasion to make a few remarks; but certainly I agree implicitly with what was stated by the Learned Lord who opened the statement to you, that that Address is *ex facie*—(I wish to use his words according to my recollection of them,) an improper, treasonable, and detestable Address.

With this great charge made against him, where is the evidence that my client had any share in the composition or the posting up of that Address? That was the great charge blazoned in this indictment, which his Counsel were bound to watch over, and to see whether there was any evidence to substantiate it or not. In the first trial that was to take place in this county, where such detestable crimes are said to have been carried on, certainly that Address was the very matter that it was to be expected would be the subject of the first trial.

We naturally expected to see some attempt at least to develope the traitorous conspiracy from which this Address issued—to have been told something of the persons who made the Address—one or more of the members of the Provisional Government who dictated it. It is strange, indeed, if the vigilance of government has not been able to detect any one of the authors who contrived, or the persons who circulated this Address, throughout the country. Upon what charge does this poor man come before you? As one of the committee who made that Address—as the person who composed it—as the person who issued those orders which are said to have produced such confusion in the county? Is there a shadow of evidence—has it been proved by one witness that he ever saw it? There is only an attempt to prove, that possibly, or probably, he might have seen it, or read it, if he could read. There is evidence brought with immense care towards the end of the trial, after numbers of witnesses have been examined—after one swore he had never seen it in Strathaven—after a great many were examined who were not asked whether they saw it; there were one or two witnesses who swore, that they saw it on corners of houses, or in other places; one heard it read; and one saw it on a wall; but there was nothing more than that a few persons had observed it posted up in Strathaven—no evidence of the duration of its appearance; no man says he saw it a certain number of hours or days together, but some saw it, and some did not. A greater proportion of the early witnesses were not asked the question; it must, therefore, remain your belief, that it did not remain up

a considerable time. It is not said that it was posted near his house, or that he saw it posted it up, but there was a probability—what degree of probability you like—that he read what was posted up at one or more places, for a certain time, in the town of Strathaven. Is this to affect the life of any person ?—is it, when you are trying a treasonable conspiracy, where a person is accused of framing the Address and posting it up—of being a party to it, in the first trial at Glasgow, which, I suppose, is selected as not the least in enormity—is it to come out merely that Wilson may by chance have seen it, and from that you are to suppose that his conduct is in close traitorous connexion with this Address ? Where is the connexion with it ?—I say there is none. There is an Address, which appears to have been written in Glasgow. I can prove, if it is necessary, that that Address was known to the Magistrates of Glasgow on the Saturday evening ; and that there was a deliberation among the Magistrates, and some of them were of opinion that Address ought not to be pulled down—they considered that a better mode to detect the authors. I think they did right to use every means to detect the author of it. I will never cease to say that that Address was a publication apparently of a most criminal and treasonable nature. Who were the authors has not been proved—what were their secret motives or objects, has not been shewn ; and they may have been very different from what appears. Wicked and malignant, I have no doubt they were, though perhaps of a different nature from what was professed. But be they treasonable against the King, or directed against others, is it to be held from that, that if you find that Address in any other town, a man who has never seen it—who is never proved to have seen it or read it, is to be treated as if he had seen it and read it, and upon very slender evidence that it was there, he is to be considered and charged as the guilty person who framed the Address—who was the author of it, and all the mischiefs that it produced, and therefore as a traitor to be convicted of the greatest crime known to the law of the country.

There is another charge, of "composing, printing, and posting up divers Addresses." I do not know the meaning of this. I suppose it refers only to one Address; and I have already shewn, that that evidence is liable to many objections, and is in many respects imperfect. The next charge is for "assembling together, and, whilst so assembled, making speeches to incite the subjects to rebellion." That is a very serious charge. But there is further, "purchasing and providing arms, in order to attack the soldiers of the King, and to make war against the King." Where, Gentlemen, is there any evidence of this?—where do you see any soldiers in the matter, or talked of?—where is there any idea of any preparation of the sort? We will come afterwards to what is proved; but the utmost is, that some persons assembled one night, and my client was not there, and committed certain outrages: That, another day, ten or twelve (some witnesses say ten, some twelve, some thirteen, and some fourteen), marched for some distance along a road, while my client, subject to their power, went unwillingly along with them. This is the war against the King—this is the parading with arms. I will afterwards refer to the law on the subject, but you will attend to the fact.

There are charges of manufacturing arms, with a similar intent, for training and drilling themselves and others, with a similar intent. That was a charge, of all others, which I supposed might occur in such a prosecution as this, and which I was bound to prepare for. Where is the evidence of any drilling? I will afterwards solicit your attention to the different witnesses, but I do not recollect one witness swearing to any sort of drilling. There was an attempt to prove the manner in which they marched—whether three went first, or four afterwards; but they are only twelve or fourteen men—they walked along, and there has not been a shadow of evidence of any thing of drilling. It was said that drilling had been general in the country of Scotland—it was said there was hardly a village in Scotland in which there had not been drilling;—then Strathaven is a village in which there was no drilling, or, at all events, my client is innocent of it; because, if there was all this care to produce

evidence of newspaper societies as far back as January, would it not have been more like Treason, if there had been a drilling in January, or any other time, and would not it have connected Wilson more with what is charged? If it could have been proved, there would not have been less care to prove it.

Another charge is, an "endeavour to seduce the troops of the King from their allegiance;" what can be a greater crime—what can be a more serious charge?—This unfortunate man is accused at the bar as a traitor, who has attempted to seduce the troops of the King from their allegiance;—you entered on the trial with that grave consideration—but is there a tittle of evidence to justify it?—where is there a particle of evidence to shew that he attempted to seduce the troops of the King from their allegiance? Gentlemen, I might almost stop here. But there is also a charge of subscribing money for the purpose of securing arms—there is forcing divers subjects to discharge and turn off their workmen. Where is the evidence of that? was there an attempt at it? there was certainly not, from all that appears; and if we lead evidence, it will appear more clearly, that the sentiments of my client were different—that he thought it was the duty of poor men to work.

There is, however, a Justice brought here (Mr Hardie,) to prove what took place in Glasgow—I might have as well said in Edinburgh, because it has as little connexion with the one as the other; but we have him to prove the crowds that assembled in the streets, and the consequences that must attend any alarm in this great and populous town. There are one or two persons called to say work was given up at Strathaven—this is all very well. The evidence as it stands, is, that my client appeared to work; but whether that is so or not—whether he seemed idly busy, or was truly industrious—where is there a shadow of evidence of what can alone make matter of charge against him, that he prevented others from working; that would be easily proved if it took place. There may be some people that did not work, but of force used by any person, above all by my client, there is none.

These charges are repeated in various forms in the large pages you have seen unrolled before you. Here are a great many charges most deliberately brought against the prisoner. You cannot hesitate to acquit him of them, because there is not a shadow of evidence to support them. But is it not evident, that they were calculated to withdraw his attention from the comparatively trifling circumstances with regard to which evidence has been examined? No person could possibly conjecture from the indictment, that the Crown meant to rely on such evidence as they have brought forward, as establishing a case of Treason against the prisoner.

You cannot but observe, that in this respect persons accused have many advantages in conducting their defence under the forms with which you are familiar. I do not, however, mean to say that mode of trial established in High Treason does not, on the whole, place him on an equal footing. The advantages of these modes of trial are balanced; but they arise from different circumstances, and you must keep them in view. For instance, by our law, the prisoner's declaration, if brought in proof against him, must be proved—his counsel see it, and may object or not to that declaration. In a trial for Treason his counsel have no opportunity of seeing it, unless by the indulgence of the prosecutor. At Stirling, that indulgence was extended to the prisoners, much to the credit of the Learned Lord. As I had no opportunity of seeing the declarations, I have perhaps injured the cause of my client, by casting them on the grounds I did; but I had no other course. But it is the duty of counsel to enforce the law, and object to evidence where there is a sound legal objection. If, at a circuit court, I had objected to a declaration, you might conjecture that it contained something against the prisoner; but here I could not see it, and therefore I had no choice but to object to it, though, for aught I know, it might have given a favourable impression of the case.

Whatever these apparent disadvantages are—and there is another, which is, that, by the law of this country, the prisoner has always the last word in all proceedings, except

in Treason—an advantage which is considered, in all civil cases, of great importance—Wilson is deprived of it here; the last address will be on the part of the Crown, from a gentleman of great knowledge and abilities. If any argument unsupported by evidence could affect your minds, I should consider my client as subjected to the greatest possible hardship on that ground; but unless each of the twelve honest men whom I now address on this occasion agree that his guilt has been proved, no verdict can pass against him; and if all the eloquence that has ever descended from the times of Greece to the modern bar were united, I am persuaded, with every argument—with every means of enforcing it, you could not be moved to desert your consciences, and return a verdict, unsupported by proof, against an unfortunate individual. You, Gentlemen, I address, as all and each of you must concur, that is the law; and where there is a conscientious scruple in the mind of any man, it is impossible he could surrender that against his oath, and against his conscience.

I fear, Gentlemen, I have been trespassing much on your time, and that I have yet not made sufficient progress in stating to you what is the law upon which we act. That law I must state more fully than I should do on any other occasion—because, from its novelty, it must require your peculiar attention.

The law on the subject of Treason is established by the statute of Edward III., a statute which has done immortal honour to the Parliament which enacted it. There is no instance of any one piece of legislation attended with so many singular circumstances, and so interesting to every person who values the rights and privileges of a free state. There appears to have been at all times an unfortunate and invariable propensity, seemingly inherent in all former governments, to frame treason laws, by construction or otherwise, so as to endanger the security of every Englishman; and no candid person can reflect on it without seeing the source from which it arises. When persons are possessed of power of which they are unworthy, they are not free from feelings which make them forget the duty of protecting the

lives of their fellow-subjects. Accordingly, it appears from all the great lawyers, whose writings have given such splendour to the Law of England, that this has been the cause of much injustice and oppression. Lord Coke, who is the highest authority in the Law of England, in his Treatise upon Treason, makes a commentary upon that inestimable statute. He acknowledges the glory that belonged to the Parliament that had framed it, and the infamy attached to the reputation of the Judges who had endeavoured to wrest it from its fair and true meaning. The words of the statute are, however, extremely short:—"Whereas, divers opinions have been before this time in what case Treason shall be said, and what not."—"When a man doth compass or imagine the death of our Lord the King, or our Lady the Queen, or the King's son and heir," and so forth; "or if a man do levy war against our Lord the King within his realm, that is High Treason; but he must be provably attainted by open deed by people of his condition." You, Gentlemen, though much higher in station than the prisoner at the bar, and selected by a qualification that establishes that, yet you will have the same feeling for the prisoner as if you were exactly in the same condition,—that is the object of the law; you will feel for whatever circumstances of weakness his station may have placed him under in a manner no other judges can feel, which make you always the only supreme judges of the intent with which any thing was done which is said to amount to treason. Having the law explained to you by the Learned Judges, you are to judge whether the facts come up to the law; you are to judge whether there is evidence of that detestable offence which constitutes Treason. The traitorous and malignant intention to levy war against the King must be proved by open deed; it must be proved to the minds of a Jury of men who will participate in all the feelings such a person can have, and who, from their station, are the best judges of whatever facts occur in the country. This is the great law which Lord Coke and all others have celebrated. He says, in the passage that immediately follows, that this Parliament was called "the Blessed Parliament," and justly they were so;

because if that person is to be highly estimated who brings a country out of a state of vassalage, and danger, and civil war, what are we to think of this Legislature, who placed the lives and securities of men in a condition in which they can live safely, and are freed from the oppressions which a government may be disposed to exercise, from the uncertainty of not knowing what may be brought against them, what facts, which they may have committed innocently, may be converted into great crimes, aggravated and distorted by the great efforts which will always be used to support a prosecution by the State. This learned Judge, who was zealous for the support of all the institutions necessary for the support of good government, calls that Act of Parliament a blessed Act, as having placed the security of the people on a footing on which it did not stand before.

On that passage in the statute, page 11, which I have read to you—"that they shall be provably attainted by persons of their condition," he says, "In this branch, four things are to be observed: first, this word *provably*—that is, upon direct and manifest proof,—not upon conjectural presumptions or inferences, or strains of wit, but upon good and sufficient proof. And herein the adverb *provably* hath a great force, and signifieth a direct and plain proof, which word the King, the Lords, and the Commons in Parliament, did use, for that the offence was so henious, and was so heavily and severely punished, as none other the like; and therefore the offender must provably be attainted, which words are as forcible as upon direct and manifest proof." It is, therefore, only upon direct and manifest proof that this individual can be convicted. Lord Coke adds, in a note: "Note.—The word is not *probably*, for there *commune argumentum* might have served, but the word is *provably* be attainted; so anxious was he to enforce that it must be the direct and most manifest proof on which a person can be convicted of Treason. The indignation of this great judge against those who had impaired the statute is expressed in language not usual in a person of his gravity and his station, although certainly not more than the occasion demanded.

He says, with reference to the power which judges had assumed of making treasons by construction, "By this it manifestly appeareth, what damnable and damned opinions those were concerning High Treason, of Tresilian, Chief Justice of the King's Bench, and others who were associated with him." These words express strongly the heinous offences of those judges who perverted this excellent law, deprived subjects of their safeguard, and undermined the security of the state, a crime, compared with which any common Treason, any common murder, must be considered as small, because the evils arising from it are comparatively small and trifling.—By those attempts to stretch the law, the lives of our Monarchs were endangered. Lord Chief Justice Hale and Blackstone trace the fatal issue of the reign of Richard II. to departures from this statute, which deprived the subjects of their security, and thereby weakened the great support of the Throne. You will find that the Monarchy has never been so much in danger,—that the reigning dynasty has never been so near its dissolution, as when the law of Treason is stretched in the smallest point; nothing has tended so much to fix the pyramid on which the British Constitution is fixed, as the mild, deliberate, and merciful decisions of Juries in High Treason, during the last hundred years. What is the cry of weak men every day? It is, we must have violent punishment; we must not allow a person, whose conduct is dangerous, to escape. These feelings unfortunately sometimes prevail, and produce charges which not only endanger the life of a fellow-creature, but tend to betray a most sacred trust—the country itself, the Constitution, and the Government, which can only subsist on a wise and merciful administration of justice.

The great authority in the English Law, Judge Hale, to whom I have referred, observes, with regard to what passed before the statute, that there were various instances of perversion of the law. He says, (page 82,) "By these and the like instances that might be given, it appears how uncertain and arbitrary the crime of Treason was before the statute of 25th Edward III., whereby it came to pass that almost every offence that was, or seemed to be a breach of the faith

and the allegiance due to the King, was, by construction, and consequence, and interpretation, raised into the offence of High Treason; and we need give no greater instance of this multiplication of constructive Treasons than the troublesome reign of King Richard II., which, though it were after the limitation of Treasons by the statute of 25th Edward III., yet things were so carried by factions and parties, that this statute was very little observed; but as this or the other party prevailed, so the crimes of High Treason were, in a manner, arbitrarily imposed, and adjudged to the disadvantage of that party that was intended to be suppressed; so that, *de facto*, that King's reign gives us as various instances of these arbitrary determinations of Treasons, and the great inconveniencies that arose thereby, as if, indeed, the statute of 25th Edward III. had not been made, or in force." He concludes that chapter by observing, in words which I beg leave to call your serious attention to, "Now, although the crime of High Treason is the greatest crime against faith, duty, and human society, and brings with it the greatest and most fatal dangers to the Government, peace, and happiness of a kingdom or state, and, therefore, is deservedly branded with the highest ignominy, and subjected to the greatest penalties that the law can inflict; yet by these instances, and more of this kind that might be given, as it appears, first, how necessary it was that there should be some fixed and settled boundary for this great crime of Treason, and of what great importance the statute of 25th Edward III. was, in order to that end; secondly, how dangerous it is to depart from the letter of that statute, and to multiply and enhance crimes into Treason by ambiguous and general words, as accroaching of royal power, subverting of fundamental laws, and the like; and, thirdly, how dangerous it is, by construction and analogy, to make Treasons, where the letter of the law has not done it, for such a method admits of no limits or bounds, but runs as far as the wit and invention of accusers, and the odiousness and detestation of persons accused, will carry men."

There is another authority on the Law of England, to whom I beg leave to call your attention, a Judge whose

memory will be respected as long as the Laws of England remain—I mean Judge Foster, who states the law in the same terms. He says, (p. 93,) "The ancient writers, in treating of felonious homicide, considered the felonious intention manifested by plain facts, not by bare words of any kind, in the same light, in point of fact, as homicide itself. The rule was *voluntas reputatur pro facto;* and while this rule prevailed, the nature of the offence was expressed by the term, compassing the death." He adds, "This rule hath been long laid aside, as too rigorous in the case of common persons. But, in the case of the King, Queen, and Prince, the statute of Treasons hath, with great propriety, retained it in its full extent and rigour; and, in describing the offence, hath likewise retained the ancient mode of expression." "When a man doth compass or imagine the death of our Lord the King, or of our Lady the Queen, or their eldest son and heir, and thereof be, upon sufficient proof, attainted of open deed by men of their condition." He says, (cap. 1. sec. 1.) "The words of the statute descriptive of the offence, must be strictly pursued in every indictment for this species of Treason. It must charge that the defendant did traitorously compass and imagine, &c. and then go on and charge the several overt acts as the means employed by the defendant, for executing his traitorous purposes. For the compassing is considered as the Treason, the overt acts as the means made use of, to effectuate the intentions and imaginations of the heart; and therefore, in the case of the Regicides, the indictment charged that they did traitorously compass and imagine the death of the King—and the taking off his head was laid, among others, as an overt act of compassing; and the person who was supposed to have given the stroke, was convicted on the same indictment." The fact must be proved clearly, so clearly as to demonstrate the traitorous and the malignant intention. That was the interpretation given to the statute at a time when the law might seem most in danger, I mean, on the restoration of Charles II., when there was a trial of the Regicides for the murder of Charles I., and when the nation was in a state of mind to view their actions with the utmost severity; and

yet it appears that then the Judges decided they must be tried according to the provisions of this statute; and therefore, instead of being tried for murdering the King, as the direct charge, they were charged with compassing the King's death. It is evident that the law requires the most clear evidence of treasonable intention. Even where the Sovereign is actually murdered, evidence of the actual murder is given as the overt act, or *open deed* which shews that they compassed or imagined what was treason.

Therefore, Gentlemen, in all the cases before you, you must have an overt act proved, by clear and manifest evidence, that demonstrates that intention; it must be proved to you, so as to leave no doubt upon the mind of any of you, that the prisoner at the bar had that malignant state of mind, that he threw off his allegiance, and either levied war, or compassed the King's death. The state of a man's mind can only be known by an overt act; here it is guarded from construction, and conjecture, and suspicion—the open deed must be proved in such a manner, as irresistibly to lead the minds of persons of his condition, a fair and honest Jury, to the conclusion, that that was the purpose of his heart; and if they are not satisfied it was, they commit a crime more heinous and atrocious than I need to describe, if they find him guilty.

This is the ground of the confidence I feel, however imperfectly the case is stated now, and however ably it will be urged on the other side. Some fact must be proved to you, which will bring your minds to that conclusion, that the prisoner at the bar was a treasonable traitor, either levying war against his Sovereign, or that he had that detestable malignity in his heart, proved by open acts, that you must say he compassed his death.

I have looked with anxiety among all the cases of Treason which the little time I had would permit, or which my former recollections furnished me with, for any case resembling the present. I challenge the gentlemen on the other side to state the circumstances of one trial for High Treason, on which any body was convicted, which has any resemblance to this—where there was ever a proceeding of this grave, solemn, and

important nature—a trial for High Treason founded on such facts, where there was a conviction. Is this a conspiracy against the life of the Sovereign? Is it an attempt to seize his garrisons? Is the prisoner tried for such attempts as have been made to destroy the Government, to seize the Bank, or any movement of that kind, by a great armed array? What is the statement? It is not that he put up the placard; not that he knew the people that put it up. It is not proved that he even read it; but that he and some others, in a small village in this country, seem to have gone a few miles on the road, and then they turned back; and on this you are to convict a person of High Treason. Good God! Gentlemen, I can hardly believe I am addressing you on such a case, prepared as I was by this indictment for all these charges of seducing soldiers, and levying war, and writing and publishing this traitorous hand-bill, and a Provisional Government, and all its apparatus, in the first trial in a town, which was supposed to be the seat of treason, where thousands were said to be engaged in treason; where there was a Provisional Government; where it issued its mandates, at which all persons trembled—but there is nothing of the kind.

Some persons came to Wilson's house at night. This is one charge out of which you are to distil poison into your verdict. There is no evidence that they came to his house more than to others they went to at his desire—no violence was offered at his desire—none while he was present, or aware of what was done; and there is no evidence that he ever saw, or read this proclamation. Gentlemen, can you, against your oaths and consciences, find him liable for it? The Treason-law never was more strained than it would be here, if the Crown should get your verdict on a ground, which would make the lives of every person as unsafe as they appear to have been in those unfortunate periods which are lamented by those great Judges. There may have been a great Treason; there may have been a Provisional Government—let such persons meet punishment; let there be evidence to convict them: But here do you meet any thing of the kind? Did not your minds revolt against the evidence which was laid before you upon that indictment; for

desiring which to be read, I was said to have taken up your time unwarrantably?

I must, with reference to this part of the case, make some observations on the speech of the Learned Lord. He stated many things, indeed most of his speech, with perfect propriety; but there was one doctrine which I cannot acquiesce in. After referring to the law, he said that the main matter was levying war; he did not tell you what levying war was; but he said, that what amounted to levying war, which he considered as the main charge, was to be fixed by the Judges. According to the note I have, it may be an imperfect one, he stated that the Judges were to fix what was levying war.—

Lord President.—God forbid the Judges should fix it, but the Judges are to state what is the law.

Mr Murray.—I took down the words used. This appeared to me a most extraordinary proposition. The Judges are to declare to you what the law is;—whether the facts before you amount to levying war, or whether what he did was done with the intention of levying war, it is for you to determine; it must be upon your oaths, and upon your consciences, that that question must be answered. I have read some authorities, and I may read more; and I trust I shall not state any thing in point of law on which I shall be subject to any animadversion. In all the trials with which I am acquainted, the Judges, having stated what was the law, left it to the Jury to say whether the evidence amounted to levying war; in that particular case, the mind and the intention of the person accused is your province. The traitorous design required by law must be proved to you by clear evidence; he must be attainted by you—you are the persons who perform that function; and you, after being told what the law is, having the evidence stated to you with great accuracy, are to say whether it amounts, in the particular case before you, to levying war.

After these observations on the law applicable to the case, I wish to refer you to your notes of the different witnesses. The first witness is James Thomson. This person is brought to prove that he heard a knocking and a ham-

mering. I suppose the inference from that is, that he was knocking and hammering arms—I presume that is the conclusion which the public prosecutor wishes you to come to. On the trial of a dog, would you hold that to be evidence—that because there is heard a knocking and hammering in a house, that is proof of fabricating arms? Was there ever such a supposition?—can a Jury be addressed on that footing that they were to draw an inference? We will put the worst interpretation on it—we have got a noise, and therefore there must be a traitorous conspiracy. You had better convict the man at once, and say, we did it, because we required no evidence to do it. Was there ever any thing like it attempted in a court of justice? How can we believe, then, for a moment, that such evidence is to affect the life of any person. It admits of ten thousand explanations, and does not authorise any one inference against him. I am safe from ten thousand such witnesses; but it is important in one point of view—it shews there was nothing so trifling with regard to this person, but that some envious neighbours might be brought forward, that you may put an uncharitable construction to affect his life. I say, all the strained constructions which have been attempted against innocent men, in the worst times, are nothing to this. There is nothing connected with it; yet it is to lay a foundation for something in your minds in the beginning, and from that you are to come to some unfavourable conclusion, and that is to affect him on other points; for where is the evidence of any thing whatever done after that to which this knocking and hammering could relate which tends to promote the objects? That there was noise I might readily admit. But add the evidence of it to the case of the Crown, where is there the shadow of a case?—was there ever such evidence brought forward, unconnected with any thing else? And can you do better than examine scrupulously all the attempts made afterwards, when such evidence as this is brought forward as the foundation of a charge of Treason?

The witness is afterwards examined to prove Wilson's coming out. He says he held his sword down; on cross-examination, that he seemed downcast. There is evi-

dence, which I do not dispute, that he came out that day, and proceeded along the road with those people for a certain distance. I trust I will be able to shew you what was the compulsion under which he went on that occasion, because I am anxious to free my client from every shadow of blame on that ground, painful as it must be to go into what may affect other persons who have fled. It is impossible to adduce their evidence to you on this occasion—my evidence, therefore, cannot be complete. But can you doubt that persons might be exposed to danger, if they did not go? One witness says, he was seized the night before, and he was closely guarded. Where a person is forced during the day to accompany others, and they have fire-arms, and threaten him, a different degree of custody is sufficient. In one case he must be kept close, or, if he escapes a few yards, he escapes entirely; but in the day he is subjected to danger while within reach, and while they are vigilant, a person of a certain age can have no hopes of escape. I would be sorry to refer to any thing ridiculous on a case of this importance, but an illustration of this is in a work you must have all read,—I mean the History of Gil Blas, who, in the early part of his life, is travelling along the highway, counting his little money, and he is arrested by a voice from a thicket—an old lame soldier commands him to give him some of his money. That is a restraint fire-arms must impose on another person; while within reach of a gun, he is within reach of danger, though the other cannot move. At night he may escape as soon as he gets out of sight, because, when he turns a corner there are no means of finding him. And here it is necessary to advert to the nature of the restraint in such circumstances. It was said by the Learned Lord, whose speech was on the whole very candid, that where a person goes along eight miles, he cannot be held to be under restraint, that is so great a distance. That is surely contrary to every dictate of common sense, and as for authority and law for it, I believe there is none to be found. I observe some cases preserved by Judge Foster, where pleas of that kind were made after the Rebellion in 1745, and those pleas were not sustained;

but he states the principle of the law most clearly. One of them is M'Crowther's case, which was of a tenant of the Duke of Perth. He alleged that the person calling himself Duke of Perth had summoned his tenants, and had threatened to bind them in carts, unless they would serve along with him. It appeared that this took place some time in the month of August; M'Crowther afterwards bore a commission in the rebellious army; he became a person of condition, and he was taken prisoner at the surrender of Carlisle, which was about the 30th of December; so that this person had gone from Perthshire, had then joined the army, and gone from Edinburgh to Carlisle, and was found there after an interval of many months. The restraint could not be the ground of acquitting him in that case; but nobody ever stated that an interval of two hours was sufficient to exclude the defence of continued restraint; and it is clear my client did not continue with them weeks and months; he went only a few miles with them; the party went on, and he left them as soon as he had an opportunity of doing so. And surely there the plea of being under constraint is one that your own breasts must feel is a fair and just defence, and which may be most justly sustained. What could be greater than the control of the influence they were supposed to possess. You do not see evidence that they were connected with the provisional government. Yet there is a state of turbulence in the country, men's minds are unsettled, and they are disposed to commit strange and perhaps violent actions; there was distress and confusion in the country; and surely in these cases, where a person is led out, not committing a crime—not participating in any thing that would make the higher principles of his nature revolt and stand against it,—you are not to believe that he has abjured his allegiance. You are not to condemn a man of Treason, because he is not a firm or heroic character; you are to look at human nature, with all its weaknesses, in the different gradations of life. Are you to say that a person, because he goes a few miles, has a malignant heart? That he levies war against the King, because he submits to these deluded people, who have

threatened others, while he was evidently under the operation of fear? Judge Foster says, a person is not obliged to account for every day, or every week, or every month, while he is acting under the influence of constraint; yet, Gentlemen, the Learned Lord seems to think he is bound to make up his account of compulsion for every step of the road—for the few paces, or for the hundred yards the witness followed him; and while he obeys—not a band of rebels carrying on war—not persons going with disorderly and improper attempts—not committing any crime in his presence—he is a traitor, because he submits to the superior force of fourteen or fifteen persons, whom he left before they had gone more than a few miles from Strathaven. He seems to go with them without encouragement, from the evidence of the Crown, dejected and unwilling. You are to hold that is such evidence, as that you will convict a man of being a traitor, because he does not account for every step of the journey.

I hope, under all the circumstances—under the difficulty of being deprived of the evidence of those persons who have left the country—I shall be able to give you evidence of the force which was offered to him; but, if that should not be made out, would you say he is bound to account for submitting to two hours of constraint—that while he did not join a foreign pretender, nor a person invading this country, and coming to destroy our liberties, and while there is nothing proved, but that there has been a proclamation put up, which he is not proved to have seen? There is no evidence that Treason was committed by any person; there is no proof that the party who forced him along with them went with any particular object; but you are desired to unhinge the plain and manly nature of your minds, and with a number of conjectures brought together, because there is a proclamation many days before put up at Glasgow; and because weavers left their work at Glasgow; because others are said by Hardie, a respectable justice of the peace, to be in a disorderly state at Glasgow, where he pulled down that paper; because there is a party march on the road, and do not go there; you are to hold, that is such

evidence of a treasonable conspiracy, you will convict a man upon that alone of High Treason. Do you not see what a number of steps (every one of which is pregnant with injustice,) you pass over to come to that conclusion? There is a proclamation at Glasgow some days before; then there is an attempt to prove a meeting on the Monday night, where there are deliberations with regard to arms —Is there any attempt to prove my client was there? Did not the witnesses examined on that point disprove it? There was no question put by the Crown, whether he was there—but when I asked the question, they said they did not see him. I could prove he was at a distance of some miles; but it would be wasting your time to do so, because there is no evidence that he was there. Then if he was not there that night, why was evidence of it given you. Because he walked along this road next day with some of these people, therefore you get evidence of that meeting. The prosecutor is allowed to bring such evidence; and afterwards to bring it home to the accused. He has failed to do so; and it is for you to say whether he is to be affected in the most remote degree by it. I should have done no service towards my client if that had been excluded; it is in his favour. There is a meeting on Monday night with improper views; he is not nigh that; it is within a short distance of Strathaven; he could have attended as the others did, if he had had any wish to promote it. If he had been a servant, a minion of the supposed Provisional Government, or evil-disposed persons, would not he have been the first to go and recommend this measure? If there was this Treason boiling in his breast, the malignity of which is said to have overflowed, would he not have been the first man there to give his aid to this mischievous meeting? What is the conclusion you draw? Is it against him? Am I not in possession of your conclusion in his favour? for what could such a person do? He was not a person of power to issue his mandates; he could only go there, and, by his voice or counsels, try and influence other traitors to act; but he was not there. I say it is fair evidence to go before you; it is fortunate for the prisoner at the bar that you are in possession of it; be-

cause there is but one conclusion which you must draw from it; because you see the line drawn between him and others. There are those people marching; there are those who propose violent and seditious projects, who have some wicked purpose of their own, perhaps very remote from Treason, which their own desires to violate the properties of others, which their hopes to avail themselves of the confusion likely to arise, disposed to pursue lawless measures, though I do not see that they were treasonable; my client does not go among them, and when first among them, he does what he can, by his counsels and advice, to recal them to their duty.

Accordingly, what is the case, when he is present, and when he is not? Is he eager to be where violence is done? Does he concur in any violence? He is with them one particular day; keep that in your minds. What is done to forward their purpose at one time and the other? There is a meeting on Monday, where he is not. I ask for your judgment on that, and I say it is in my favour. There are proceedings on Wednesday evening of a most violent description—Is he among them? Was there ever evidence detailed to greater length than was with regard to that? Have we not an account of the whole proceedings, by one witness; then a minute detail of each place to which that party went, occupying many hours of the evidence before you? Gentlemen, do you not recollect a long series of witnesses, who narrated minutely every thing that took place at that period?—that was calculated to make a great impression on a Jury less discerning than the one I address; but I am mistaken if you do not see that there was an attempt to enlarge and amplify this case. One witness is taken by them, and carried round by them; he gives an account of all that party. Then there are five or six witnesses who speak of the different acts which took place on that occasion. Is the prisoner there at that time? Nay, Gentlemen, he is not only not there, but no traces of him are mentioned by these witnesses, who repeat in their evidence every thing that passed. I made an objection; it was ruled against me by the Court, most fortunately, and they were allowed to give

in evidence every conversation which this witness taken by force, or any of the persons, heard during this night. Wilson was not there; and in all that was said at the different houses of the persons examined, there is not a word with regard to Wilson. What must be the result? He either was with them, or not; the apparent object of the Crown is to shew, that he was sitting at home, devising all this. They say these people were coming in and out of his house. Easy would it have been to have accused any of these witnesses of High Treason, innocent as they undoubtedly are, and to have supported the charge by stronger evidence than is brought against Wilson. But is he ever mentioned, or referred to? Mr Cochrane furnishes a gun; he enters an account of it; he gives them powder and lead; that would tend to establish some of the various counts that extend through oceans of parchment. Cochrane is under restraint; how did he prove it?—Did he call on his neighbour to assist him? They came into his house; they demanded admission. He gave them powder and shot, and enters them as an account in his books,—that is the conduct of this person under restraint; yet do I insinuate he was not under restraint, or that he was a traitor, or acting treasonably?—God forbid!—while defending one person, I would not throw slander, or poisonous arrows against another. It seems to be admitted that he was under restraint; but you may judge a prosecutor might twist these various circumstances, give them another colouring, and make them much stronger against him than any thing brought against my client.

I have already observed that, during this night, there is not one tittle of any evidence of any reference whatever to my client, or of his being connected with them. He does not stand in the situation of Cochrane, who enters the articles in his books, and furnishes them—he does not stand in the situation of many others who accompanied that, not that they are not as innocent as men can be. There is not a shadow of evidence. The Crown bring forward their evidence with great care; they prove every word that was uttered, and there is nothing comes out against my client.—

With all these various individuals,—pursuing certainly most improper purposes—if he had been connected with them, and had influence over them, it is impossible that something should not have come out against my client; but there is not a stain, or a link of connexion, or of proof, arising from the whole evidence, brought to you. Witness after witness, were carefully and minutely examined to what was said and done; to their firing guns and pistols; to their forcing one man, and threatening another; and being first in one house, and then another; and yet there is not one word or circumstance which attaches knowledge or participation in their designs to my client.

There is one witness, whose evidence might make a greater impression upon you than that of any of these—not, Gentlemen, that I am any way afraid that, when that evidence is considered by persons of your sound and candid understandings, it will, in the smallest degree, endanger the situation of the prisoner at the bar—I mean the evidence of a person of the name of Hamilton, who speaks to two conversations with my client, from which the Crown Counsel are evidently disposed to draw an inference, that he was a person having the worst designs, and disposed to follow them out. Now, Gentlemen, there is one matter that ought to be stated to you—that this woman is the sister of a person who has fled from this country, under the accusation of these crimes. Although, I believe, no indictment was found against him by the Grand Jury, he is still subject to another; and, do you not feel that, where a person is in that situation, —where their near relations consider them exposed to the charges,—they give their evidence upon a very different footing, indeed, from what other witnesses do. No doubt, Gentlemen, this person must feel, that, if the prisoner at the bar was convicted, if what he has done could be magnified into this great crime, if he was an unfortunate sufferer by your verdict, her brother would be in a state of comparative security. There is no doubt that if a certain number shall suffer on these imputations, those who have fled the country, and have not ventured to stand their trial; those who have not surrendered themselves to justice, as

my client has done, would be allowed, in much more aggravated tumults than this, to return quietly home, and meet with no further molestation. I do not wish to make any severe remark upon the evidence; but she stands in a different situation from another witness; and that person must be most unfeeling and perverse, who would not talk of such a witness with tenderness. I wish to say nothing against her; I would only observe, and I beg you to look to your notes, and observe the ambiguity of the statements of this witness. There is an attempt to prove a conspiracy; there is an attempt to prove, by a conversation with this witness on the morning of Monday the 3d, with regard to the Radicals and their success, that he thought they were the most numerous, and that he hoped they would gain the day.—This was said to be with reference to what took place afterwards; that is certainly the inference which her evidence is intended to give. But how uncertain is the evidence of any words uttered—any conversation not connected with any act at the time? No person can repeat a conversation, without some bias from their affections or resentments, without perverting words, by want of memory, or want of candour; but always the security of a Jury, in such cases, is to compare the words with the facts; they cannot lie or be mistaken; they cannot be perverted or misunderstood; and here they are clear, if it was Wilson's intention to carry on these proceedings, if he was engaged in these designs, and resolved to carry on their measures, you would have found him at the meeting on Monday evening, after this conversation took place in the morning; on the contrary, he was not at the meeting. The fact is given up, or I could prove it by various witnesses. Am I not entitled, in a case where the persons have fled the country, who were there, to say that this witness is disposed to plead her brother's case? Can she do otherwise? Can she have any other feeling than that she has a brother in jeopardy? What she says against the prisoner tends to place the person she loves most in a situation of safety. No interest that can be stated is so great to the best minds, and the best hearts, or so apt to prevent the memory and recollection—to place the words of one in-

to the mouth of another, and to suppose that this person uttered what her brother said. I appeal to facts—I appeal to what passed that evening. We do not find him there. If this witness had been correct, you would have had a clear evidence of facts against him. It is by the facts your verdict must be judged; and to them I appeal most confidently, upon this part of the case. She comes with that anxiety, that she has even a certificate, which she produced, of her own character. I never saw such a thing before. I do not impute any thing wrong; she is a witness of great anxiety and feeling; I wish to treat her with great deference, but I must regret that, as there appear to have been other persons present on that occasion, those witnesses were not called upon this occasion—I mean Donald and Bligh.

Lord President.—I have nothing of Donald and Bligh.

Mr Murray.—There is a Mrs Young, but she is not adduced. This witness alone is adduced, and it rests on her single evidence of what passed, and I have the evidence of facts against her.

I have left to your consideration the evidence of the meeting on that night. There is no subsequent evidence against my client—there is the evidence of what passed upon the Wednesday night, where he appears as innocent as any of you, and where evidence has been accumulated so laboriously, in order to prove something against him.

You come next to what passed on the morning, where Wilson comes out reluctantly, and goes along the road, where there is force, and where he had a sword, and became the object of these persons, because nobody was to be omitted who had any weapon. He was nearly related to one of them. It was proved again and again that Walters was his son-in-law. Is that to be evidence against him? I have no doubt it is brought to be evidence, to be candidly left in his favour. Is it not evident, that, where was a person so violent as Walters, he would not let his father-in-law remain behind him? They seize one man, and take him out at night; it gets dark, and he escapes.—Is it surprising they should seize this individual, and endeavour to make him one of the persons whom they would force along with

them? Does he join to encourage them? Does he appear more than an unfortunate person, giving no other aid than his constrained presence? He leaves them, and there is evidence of the period of his leaving them. There is the evidence of Thomson and his daughter; and I observe it was dwelt on with some degree of triumph, that, when my client was leaving Thomson, he said, if this comes into account, you will recollect I was here. The inference the other party drew from that was, that he had it in view; "if there is any investigation on this subject, you will recollect I was here."

Lord President.—"Recollect I came here on business," was what the witness said; and the man answered, "I will recollect you were here."

Mr Murray.—Yes, my Lord, the evidence was that. There is no doubt he says he made a pretence of being there upon business; he is desirous to shew he was there on business; and he is anxious to get away from the party with whom he had been, and he said he was there upon business, that if ever the matter was questioned, it should appear he was there on business. Had not he a reason for that? Must not it be painful on his part to have to prove restraint against him by those persons with whom he lived? some connected with him, whom he would be unwilling to bring into danger? It was obvious he was interested to have it believed he was there on business; he was desirous to get away in the best manner he could, on a ground which would neither expose him to their resentment, nor injure them; he was desirous to do so, because it is evident, in that way a person may more effectually secure his safety, and that of others. They all were neighbours, one of them was related to him. Would the case have been better if he had said to this man, "I was constrained and forced by these persons," than in the way the other party put it, and as I allow it admits of being put, that he talks about business? he desires the person to recollect that he came about business, and the person says, "I recollect you were here," seeming to intimate that it was not entirely business that brought him. I say he must have been unwilling to have said any thing against

his neighbours, to have exposed his daughter, to have exposed his son-in-law, and that therefore, if he could secure himself without criminating them, or saying any thing to bring them into hazard, it was natural and right, and surely your minds cannot be affected by that circumstance. His own security was the first object, their security the next; he could not state the matter fully to this person, because it might expose them to danger; and I say he would have had less feeling, if he had stated the matter without having regard to their situation, or to the difficulties in which they were placed. There was a witness examined as to the words he used, with regard to what he heard on the road. The accounts were that Glasgow was at peace. I need not repeat the evidence which you have taken down, but I leave it to your minds to put a fair and candid construction upon that. It comes to this, that on every occasion he recommended their retiring, and when he had an opportunity of getting away, he withdrew. Is this the act of levying war which you can carry in your minds, or a traitorous conspiracy against the Crown? There never was such a case tried as this upon such evidence. A conviction founded upon it would be something more strange than has been taken in any other proceeding.

There are many other remarks, which I am desirous to postpone. I leave the case to your consideration, with these reflections. I say, where is the intent on the part of this individual, which can alone constitute the crime? where is the design of Treason proved even against the party of men which he joined under restraint? I trust, in the evidence I shall bring, I shall be able to shew a variety of circumstances, which must satisfy you of his entire innocence; his main trade was that of a hosier, as it is stated; but he was also a person who repaired arms, and did a little work as a gun-smith, and these small jobs which persons in a country village often carry on. In this situation, if he had been the person supposed, there would have been abundant evidence, if such designs went on, and participated in them, of his lending assistance. I will prove that at this time he repaired a gun to Mr Hamilton and returned it; he might

have kept it and made use of it, if he had any design to assist or arm these persons; there was a pistol in his house, which might have been immediately rendered serviceable. I think one of the witnesses spoke more vaguely, and said it could not have been rendered serviceable, but I believe it will be proved to you that it could; it was in his house, and he did not give it to these persons. We will prove the sword had been there a long time, and he was forced to carry it, as he was known to possess it. He could have given them other more effectual arms, but he did not do so; that will be part of the evidence I will lay before you. I have endeavoured to give you a general view of the case, and I submit to you, that to attach a charge of Treason on any of these minute points brought out, would be a perversion of the law. There are no former trials for Treason which I do not wish you to keep in mind; they must all shew how different this case is. Here it is only the strained application of the proclamation, which there is no evidence he ever saw; of orders of meetings which he did not attend, of transactions he was not present at. It is only by keeping these things out of view, that your minds may be so perverted, if I may use the expression, as for a moment to feel you can return a verdict of guilty of High Treason. With these observations I leave this case to your consideration; and if I have expressed a doubt, or referred to former Juries, it is not that, with respect to your minds, I entertain any doubt; far beyond any statement of mine, or any argument I can urge, is the confidence I feel that my client may implicitly trust to the integrity of the upright men, whom I have now addressed.

Lord President.—I presume it is your Lordships' pleasure now to adjourn. Gentlemen of the Jury, it is quite impossible to finish this trial to night, without giving you a degree of fatigue, which would make it impossible for you to deliberate on the case; but at the same time it is impossible for you to separate, and the Sheriff has provided one great room to accommodate you, where you will be under the care of an officer of the Court. Refreshments will be given you, and I hope you will make it of a light kind.

Foreman of the Jury.—There will be no objection to our

sending to our houses, to mention that we shall not be home this evening.

Lord President.—That will be done for you, you must not converse with any body but yourselves.

Adjourned at half past twelve, to ten o'clock this morning.

SHERIFF'S COURT, GLASGOW,

Friday, 21st July, 1820.

The Prisoner was set to the Bar.

Evidence for the Prisoner.

JEAN SEMPLE, *otherwise* HAMILTON—*sworn.*

Examined by Mr Monteith.

Q. Are you the wife of John Hamilton, farmer at Breconreach?

A. Yes.

Q. Do you know a place called Prior Hill?

A. Yes.

Q. How far is Prior Hill from Strathaven?

A. Three or four miles.

Q. On what side of Strathaven?

A. The south side of Strathaven.

Q. Do you know the prisoner at the bar, James Wilson?

A. Yes.

Q. Do you remember, upon the Monday the 3d of April last, going from Strathaven to Prior Hill?

A. Yes.

Q. Do you remember the day?

A. The first Monday in April.

Q. What time of the day did you leave Strathaven?

A. About twelve o'clock.

Q. Did you see the prisoner at the bar upon that day?

A. Yes.

Q. Where did you see him?

A. I seed him in the road, a mile out of the town.

Q. Upon what road was it?

A. Upon the road.

Q. Is that the road to Prior Hill?

A. Yes.

Q. Did you overtake him upon that road, or did you walk along with him any way?

A. Yes.

Q. Where did you walk with him to.

A. To Prior Hill.

Q. What became of him when you went to Prior Hill, do you know?

A. He rested for some time.

Q. Did you see him go into any house at Prior Hill?

A. Yes.

Q. Whose house was it?

A. It was Mr Hamilton's.

Q. Did he remain there for some time?

A. Yes.

Q. Do you know how long he remained there?

A. Perhaps half an hour, or more.

Q. Did you see him any time subsequently that day at Prior Hill?

A. Yes.

Q. Where did you see him?

A. In my brother's.

Q. What is your brother's name?

A. James Semple.

Q. What time of the day did you see him there?

A. At the gloamings.

Q. What did he do in your brother's house?—did he come for any purpose?

A. No.

Q. Did he take any meat in your brother's house?

A. He took his four-hours in my brother's house.

Q. Did he remain long in your brother's house upon that occasion?

A. He left about eight o'clock.

Q. Do you think it was any later?

A. I do not remember the very hour; it was between eight and nine.

Q. Do you know a place called Three Stones?

A. Yes.

Q. Is that on the same side, or on the other side, of Strathaven, from Prior Hill?

A. No; it is on the other side.

Q. How far is Three Stones on the other side of Strathaven?

A. About a mile.

Q. Do you think it is any more than a mile?

A. No.

Q. How far do you think it is from Prior Hill to Three Stones?

A. About five miles.

MATTHEW ROWNIE—*sworn.*

Examined by Mr Monteith.

Q. Do you live in Strathaven?

A. Yes, I do.

Q. Do you know James Wilson, the prisoner at the bar?

A. Yes, I do.

Q. Do you remember the day on which an armed party was said to march from Strathaven?

A. Yes.

Q. Do you remember the night before that party went?

A. Yes.

Q. Was thata Wednesday night?

A. A Wednesday night.

Q. Did you go to Glasgow upon that night?

A. No.

Q. Had you any conversation that night with Wilson, in your own house, respecting going to Glasgow?

A. I had not.

Lord Chief Baron Shepherd.—Does that go to the time of the conversation, that has been proved by the witnesses for the Crown?

Mr Monteith.—Yes, it does, my Lord; it was on the Wednesday night that one of the witnesses spoke to.

Lord Chief Baron Shepherd.—You must identify that.

Mr Monteith.—Yes, my Lord, he has said that upon that night he had no conversation with Wilson about going to Glasgow.

A. None in my house.

Mr Serjeant Hullock.—I do not object to that course, my Lord, at all.

Lord Chief Baron Shepherd.—Whether you object or not, we should see that the regular course is pursued.

Mr Monteith.—I am not going to ask as to the purport of any conversation he had.

Lord Justice Clerk.—He said he had no conversation with Wilson that night about his going to Glasgow at his own house.

Mr Monteith.—Did you go to Wilson's house upon the following morning?

A. Yes, I did.

Q. Were there several people in the house at the time you went?

A. There was a few.

Q. Do you remember any thing particular that happened that struck you upon that occasion?

A. Yes I do.

Q. Do you remember any words that were used, or any thing that was said to the prisoner by any of the persons upon that occasion?

Mr Serjeant Hullock.—I object to that; ask him what took place.

Mr Monteith.—Tell me what you saw and heard upon that occasion.

A. I went forward to the door, as I heard a little noise in the house; there are two doors; I opened the outer door, and had my hand on the latch of the inner door, and I heard a man swearing and saying, "Do not let any man come in or

go out." I opened the door and saw James Wilson coming to the door, and he said, "I am not well to-day," and there was a man behind the door with a gun, and he said, "Wilson, no excuses will do to-day, for if you do not rise and come along with us, I will blow your brains out, by our Saviour."

Q. Did you return home after that?

A. Yes.

Q. Did you hear any thing of an armed party going off soon after you returned home?

A. Yes, in a few minutes after I went into my own house.

Q. Did you go out to see that party?

A. Yes, I made out as soon as I could.

Q. Did you overtake them?

A. I did, just out of the town.

Q. Did you observe their state then?

A. There were so many running, I can hardly tell who they were, but I came up to James Wilson, rather behind the party, and I said, "James, this is a bad job to day."

Mr Serjeant Hullock.—I cannot have the conversation with the prisoner; the prisoner's conversation is not evidence for himself; what he saw is evidence, but not what the prisoner told this man.

Lord President.—I rather think what took place at the moment is a fact.

Mr Serjeant Hullock.—I beg to object to it.

Mr Monteith.—The witness had better be removed.

(*The witness was removed from Court.*)

Mr Serjeant Hullock.—The question proposed is, what did this man say to the witness?

Mr Monteith.—That is not the question; I asked him what took place, and he gave that answer.

Mr Serjeant Hullock.—Either understand my objection, or let me understand your question.

Mr Monteith.—I expect this witness to say what passed.

Mr Serjeant Hullock.—I understood the object of the question was to get at what was said by Wilson. What was said by Wilson before the party went out may be evidence, as part of the *res gesta*. But no conversation between the witness and the party, under these circumstances, can be

evidence. What took place, if to shew any restraint, or any force upon this man, might be evidence. Your Lordship sees, that upon all principles of admissions and confessions, this cannot be received as evidence. What a man says against himself, is evidence; but what he says for himself cannot be evidence. Some part of these declarations were to make evidence for the time—the conversation with Thomson for instance.

Lord Chief Baron Shepherd.—What is the period of time you ask to?

Lord President.—The witness said he ran up and overtook them, and had some conversation with Wilson, who was rather behind the rest.

Mr Monteith.—That, I apprehend, is part of the *res gesta;* it was at the very time he joined this party voluntarily, as alleged by the other side. I apprehend any thing he said then, after there had been previous force against him, shewing that force, is part of the *res gesta;* and if they are to put in evidence what the witness said upon these occasions against him, we are entitled to put in evidence the whole of what he said. It is very different from a conversation that he had afterwards. It might be easily conceived, with regard to the conversation with Thomson, that it might be made to make up a case; but this conversation took place at the very time, and within a very few minutes after this force had been used. I apprehend, in these circumstances, there can be no doubt that this is evidence.

Mr Serjeant Hullock.—I apprehend the learned Counsel has misconceived the question. He assumes that force was applied to Wilson at his house. I shall by and by have an opportunity of observing on that part of the case. But is it to be argued, whatever the man said in the course of his march, or in his accompanying these men between Strathaven and Kilbride, is to be given in evidence to-day, unaccompanied with any acts? It is a principle of evidence I never heard applied to questions of this sort. They had left the town; he overtook him at the end of the town, and he is in the rear of the party at that time; and now he wishes to state the conversation between him and the witness at that time. I submit that that is not evidence.

Lord President.—The Court are of opinion you are entitled to go on with your examination in that way. They consider that this is a part of the transaction, and part of the *res gesta*—being what took place at the moment of their marching.

Lord Chief Baron Shepherd.—You will ascertain the time, how long it was after they set out.

The witness was again called.

Lord President.—Ask him how far it was from Wilson's house when he overtook him.

Mr Monteith.—You overtook the party after they had left Strathaven?

A. Yes.

Q. Was it after they left the town?

A. It was rather after they left the outside of the town.

Q. How far from Wilson's house?

A. It might be nearly a quarter of a mile.

Q. You said that you spoke to Wilson upon that occasion?

A. Yes.

Q. What did you say to Wilson?

A. Says I, "Jem, this is a bad job you have in hand to-day."—"Yes," says he, "I know it is; but I cannot help it now."

Foreman of the Jury.—My Lord, the Jury wish him to repeat what he said.

Lord Justice-Clerk.—The witness said, "This is a bad job you have in hand to-day."

Mr Monteith.—Did he say any thing more?

A. Yes, he did: "As soon as I can," says he, "I will make my escape."

Cross-examined by Mr Serjeant Hullock.

Q. Where do you live?

A. I live in Strathaven.

Q. Have you known Wilson long?

A. About these ten or twelve years.

Q. Were you in the habit of visiting him?

A. Yes.

Q. Going to his house frequently?

A. Yes.

Q. Every day almost?

A. Mostly every day.

Q. You did that probably down to the time they were marching out?

A. Every day mostly.

Q. Were you there at any of those meetings which were held before the 5th of April?

A. No, I was not.

Q. You went at other times of the day?

A. I never saw a meeting in his house, and I do not know that he had a meeting in his house.

Q. You were not there often just before that time?

A. Yes, I was there many times; he was a man who wrought many curious bits of work, and I was there as other people.

Q. Were you there on Wednesday night?

A. About six or seven o'clock, not later.

Q. Was anybody there?

A. There was a few of the neighbours, as used to be there when I was there.

Q. Were Robertson and Stevenson there?

A. There was not one of them there; there was no mention of any men of that kind.

Q. What kind are they?

A. As they allowed them to be.

Q. What was that?

A. They allowed them to be men of that radical kind; there were none there that I could see of that kind.

Q. When you were there, there were no men of that kind?

A. No; none that I know of.

Q. There were two sets; the radical kind and the unradical kind?

A. I cannot say to that.

Q. When you were there, there were no radicals?

A. None that I know of that kind; just neighbours standing as usual.

Q. What did you say about leaving work on the Monday? was there any conversation about leaving off work at Strathaven, after the Address?

A. There was, through the town, a conversation of that kind.

Q. Did you give up work amongst the rest?

A. No; my business did not allow of that.

Q. What is your business?

A. I follow selling soft goods at times.

Q. You are a hawker?

A. Yes.

Q. You pursued your business?

A. Yes.

Q. The weavers all struck?

A. No; I cannot say that; I heard many engines going as I went through the town.

Q. Many left work?

A. I saw people on the streets, idling, and walking in the streets, as usual.

Q. Then the people of Strathaven were working the same on the Monday, Tuesday, and Wednesday, as they did the week before?

A. It appeared to me there was work going on in every shop.

Q. In the usual way?

A. I could not say that; they might not be working in some shops.

Q. You told that gentleman you had no conversation with Wilson the night before, in your house?

A. No; for I was up the stairs with James Penny, when Wilson came into my house, and he is here.

Q. Then Wilson did come into your house?

A. Yes; I heard him speak.

Q. You knew his voice?

A. Yes.

Q. What time might that be?

A. Between ten and eleven, I suppose.

Q. Did he come to seek for you?

A. I cannot say for that.

Q. But you heard his voice?

A. I did.

Q. In hawking, do you ever extend your circuit as far as Glasgow?

A. Yes.

Q. You come here sometimes?

A. I come here to buy my goods.

Q. Then it is nothing unusual for you to come to Glasgow?

A. No; I am here twice a-week, and once a-week. I am very well known.

Q. What are your days for coming here?

A. I come here upon carrier days, and other days too; whatever days answer myself.

Q. You have no particular days?

A. No; I have not.

Q. It depends upon your demand for goods?

A. Yes.

Q. Sometimes you come on a Monday, sometimes on a Thursday, and sometimes on a Saturday; just as it happens?

A. Yes.

Q. You say that you went to Wilson's house, I think, on the morning of Thursday?

A. Yes.

Q. What number of people were in his house then?

A. I could not just say, because they were walking through the floor, backwards and forwards; there might be from six to twelve, or between that.

Q. You just put your head in, and saw a man presenting a musket?

A. Yes.

Q. And you drew your head away?

A. I drew the door to, when I heard the words pass.

Q. It did not occur to you to be wise to interfere, to prevent mischief?

A. No, it did not.

Q. It was no concern of yours?

A. I just stepped away.

Q. You did not see the party issue out of Wilson's house?

A. No.

Q. But being told there was a party marching out of the town, you went out to see it?

A. Yes, I followed after.

Q. Wilson was the last, I believe?

A. He was rather behind the rest, when I got up.

Q. Where had he his sword?

A. I could not say that he had a sword positively.

Q. Can you say positively that he had it not?

A. No, I cannot; it was not a sword's haft; and he had it in this way—(*describing it*).

Q. You saw the haft?

A. I saw the appearance of a bit of a haft of wood, but the rest of it was rather out of my sight.

Q. But something he had in his hand?

A. Yes.

Q. Were they marching quick?

A. Yes; they were going gay and fast.

Q. He could hardly keep up with them; he was behind them?

A. I cannot say that.

Q. How far did you go?

A. I did not go above ten or twenty falls.

Q. You went a small distance with them?

A. Yes.

Q. And then you returned?

A. Yes.

Q. And you saw the party marched forward?

A. Yes.

Q And you returned?

A. Yes, I returned.

Q. Did your friend Wilson return with you?

A. No, he did not.

Q. You never saw him any more that day?

A. No, I did not.

Q. When did you first see the Address at Strathaven—

the Proclamation addressed to the Inhabitants of Great Britain?

A. I never saw it all.

Q. You live at Strathaven?

A. Yes, I do—Which Address do you mean?

Q. I mean that about giving over work—had you any other?

A. I saw no Address of that kind.

Q. Look at those gentlemen; and I ask you, upon your oath, if you did not see posted upon the walls of Strathaven an Address to the Inhabitants of Great Britain and Ireland, before this marching out?

A. I never saw a paper on the wall in Strathaven.

Q. Where did you see it?

A. I never saw it any where—I heard of it.

Q. Had you never been out during that time?

A. No; I went after my own business; I did not heed it.

Q. You never saw it?

A. I never saw it.

Lord President.—You never saw a paper on the walls of Strathaven at all?

A. No, not of that kind.

Mr Serjeant Hullock.—Did you know the voice of the man that spoke to Wilson at your door?

A. No, I did not—I did not know the voice.

Q. But there was a man spoke to him?

A. Yes, there was.

Lord Justice Clerk.—Were you so near as to hear what passed between that man and Wilson?

A. Yes, I was.

Q. What did he say to Wilson?

A. Wilson came forward, as I said before.

Q. At your own house, whom did he speak to?

A. He was speaking to my wife at the time.

Q. Did you hear what he said?

A. No, I did not.

Q. He was speaking to your wife, and not to a man?

A. To my wife.

Q. You heard no part of that conversation that you can detail?

A. No; for this reason, that the shoe-maker was in the house up stairs, and we heard him asking my wife whether I was going to Glasgow to-morrow; and my wife told him I was not.

Q. You are representing what other people said?

A. Yes, what I was told by my wife.

Q. Be so good as to tell us when you were last at Glasgow, on your business of hawker, for goods, before that Wednesday?

A. I cannot tell when I was in Glasgow before that; I was not there Wednesday or Thursday either.

Q. Were you there on the Tuesday?

A. No, I was not.

Q. Were you there on the Monday?

A. No—I cannot say.

Q. Do you recollect whether you were at Glasgow on the Monday previous to the Wednesday and the Thursday?

A. No; if I had been there on Monday, I would have no call to go on Wednesday or Thursday either.

Q. You say you did not go?

A. No; I did not go that Monday, or Wednesday either.

Q. When were you there before?

A. I may have been there in the course of ten days before, but I cannot recollect it.

Q. You were not at Glasgow on the Monday, Tuesday, or Wednesday?

A. I was not.

Lord President.—Did you know the voice of the man in Wilson's house that threatened him to blow his brains out?

A. I did not.

Q. Was that the only thing that you heard?

A. That was just the only thing that I heard, and when I heard that I turned back.

MARGARET BARR—*sworn.*

Examined by Mr Monteith.

Q. You are the wife of William Barr, labourer in Strathaven?

A. Yes.

Q. Do you know James Wilson, the prisoner at the bar?

A. Yes; I cannot but know him; we are under one roof.

Q. By "under one roof," do you mean in the same house?

A. In the same house, under one roof.

Q. Are your houses separated by a partition?

A. Yes.

Q. Then you are not in the same house; you do not live with him?

A. No, we do not.

Q. Do you remember, one day in April last, when the armed party was said to march out of Strathaven?

A. Yes; I remember it very well.

Q. Do you remember the night before?

A. I do.

Q. Did you hear or see any thing particular occurring in this man's house on that occasion?

A. I heard nothing but swearing a deal; and one was for shooting him; and they threatened to set fire to the house; and I took a bad fever in consequence of the fright, that I did not like to live. I thought the house would be burnt, for they threatened so, for him refusing to go with them; they swore they would set fire to the house, and burn the b——'s house; the stamping was such, I thought the house would shake; and there was not one to say, "What are you doing?" and they made their escape afterwards.

Lord Chief Commissioner Adam.—Repeat it over again.

A. It was the 6th of April, to the best of my remem brance.

Mr Monteith.—You are sure it was a Wednesday?

Colonel Crawfurd;" but we could not save ourselves, for there was a guard round the house.

Q. What was said about Captain Crawfurd?

A. I heard them mention going to the town-end, and I thought they were going to him.

Q. You supposed from that they were going to Captain Crawfurd?

A. Yes; I was afraid that they were going there for something, because he was the best subject at that end of the town, if they were wanting any thing.

Q. What did you suppose them to be wanting?

A. I did not know whether it was arms, or what they were wanting, they were such bad men; they were disputing among themselves about their commissions;—Thompson said he should have a lieutenantcy, and he said that was too little for him; James Wilson was in bed, and they said he must get up.

Q. What time was it they were talking about these commissions—on the Wednesday night before you went to bed?

A. No; after we got to bed, when the guard was round the house, and they said there was a party come from Glasford.

Q. Were you in bed, or James Wilson

A. James Wilson was in bed before us.

Q. How do you know that?

A. Because we hear every thing, from the bed being on stoops; and I heard him complaining of not being well.

Q. What time on the Wednesday night did James Wilson first go to bed?

A. About ten o'clock—I cannot be positive to the time, but I think it was about ten o'clock.

Q. Did he not rise again?

A. I never heard him get up till morning, when the party came and bounced up to that door; and then I went out, for I thought there would be nothing but murder, there were such a number of people, and nobody coming to say, "what are you doing?"

Q. When you saw the men coming down to the house, you took fright and ran out?

A. Yes, I did.

Q. Where did you run to?

A. To my daughter's.

Q. Where does your daughter live?

A. Two doors off.

Q. How long did you remain there?

A. I remained there till they were all gone.

Q. Had they to pass that door in their way?

A. No.

Q. How did you know they were gone?

A. I heard passing and so.

Q. You did not see them go away?

A. No.

Q. How long might it be before they went away?

A. I cannot say.

Q. Might it be half an hour?

A. More than that.

Q. An hour?

A. I cannot say—I was in such a fright, and so was my daughter, she had never such a night in her life; she had her sugar-tongs, and spoons, and every thing in her pocket.

Q. You are sure it was half an hour after you went out of your house before they went of the town?

A. I think so.

Q. Did those threatenings not begin till about ten o'clock?

A. I cannot say—but perhaps not.

Q. Do not you remember?

A. I might be at my daughter's; I went in between nine and ten o'clock, and told them it was not possible to stay in my house.

Q. Then those threatenings had been going on before that?

A. Yes.

Q. Might they begin about eight o'clock?

A. Perhaps they might.

Q. How long did they last?

A. I really cannot tell the time—after eleven, and then the party set off.

Q. Did they come back again?

A. Not till the morning, I believe—whether they came back in the morning I cannot tell; I heard James say, "I hope they will not come back to-night again—that he was very sick."

Q. That might be about eleven o'clock?

A. Yes.

Q. And was the night quiet till the morning?

A. Yes.

Q. There was nobody in the house till the next morning?

A. No.

Q. Were they watching round the house all night?

A. Yes, both backside and before.

Q. How do you know that?

A. Because I heard them talking.

Q. Did you see any of them?

A. No, I did not, for it was a dark night; but I heard them.

Foreman of the Jury.—You said that you said to your husband, you wished Wilson would go with them, and make his escape afterwards. Did you give that advice to Wilson himself?

Lord President.—You said that you said to your husband you wished Wilson would go with them, and make his escape afterwards?

A. Yes, if it was possible.

Q. Did you give him that advice, or only say it to your husband?

A. No, only to my husband.

Q. Did not you give that advice subsequently to Wilson?

A. No, not I; I did not see him afterwards.

Lord Advocate.—Did I rightly understand you, that, as soon as you saw that party coming into your house, you went into your daughter's?

A. Yes, I did.

Q. At what time did you say this to your husband?

A. It was through the night that I said, "I wish James would go with them, just to get them away from the house."

Q. Then the time they were urging Wilson to go out was in the night, before you fell asleep?

A. Yes, it was; and after they came from Glasford.

Q. You said you went out of the house immediately on their appearing in the morning?

A. Yes, I did; because I heard the threatenings worse than ever; for they seemed to be all drunk and unmerciful.

Lord Pitmilly.—Did you know the voices of any of them?

A. No; they were people that never used to frequent the town.

Q. How do you know that?

A. So they told me.

ADAM HAMILTON—*sworn.*

Examined by Mr Monteith.

Q. Where do you reside?

A. At Whitshaw.

Q. Is that in the neighbourhood of Strathaven?

A. Yes.

Q. Do you know James Wilson, the prisoner?

A. Yes.

Q. Is he in the habit of repairing arms, or guns, or pistols, for the country people?

A. Yes.

Q. Has he been so for a long time?

A. Yes.

Q. Do you remember, upon any occasion, giving him a gun to repair for you?

A. Yes, I do.

Q. Do you remember doing so in spring last?

A. Yes.

Q. Was it in the month of April?

A. Yes.

Q. Do you remember an armed party being said to go from Strathaven, in the month of April?

A. Yes, I heard of it.

Q. Was it before that that you gave him the gun to repair?

A. Yes.

Q. How long was it before that?

A. I could not exactly say.

Q. Was it some weeks before that? was it a fortnight before that?

A. Yes; it might be a fortnight.

Q. Did he repair the gun?

A. Yes.

Q. Did you call for it again?

A. Yes.

Q. When did you call for it?

A. I called for it a few days before the Radicals rose—three or four days.

Q. Did you get it from him?

A. Yes, yes, yes, yes; I offered him to keep the gun for two days, if he wished it to shoot the hens that came on his garden, and he told me he was not for keeping it?

Q. Did he ask you anything about keeping it for two days?

A. No.

Q. Had he, at any time before you came for the gun, asked you to allow him to keep the gun for that purpose?

A. He was at his brother's, and he had to come down by our way, and I was telling him I had a gun to repair, and he said, he should like to have a gun for an hour, to shoot the hens that came on his garden; and I told him I would send him a gun to repair; and I told him he might keep it a couple of days, to shoot the hens; and I went to him afterwards, and offered him to keep the gun two days, if he liked it.

Mr Serjeant Hullock.—I do not see how this is evidence.

Mr Monteith.—My friend must wait till he hears the examination out—till he hears the examination end.

Mr Serjeant Hullock.—Must I?

Lord President.—I do not see what it points at.

Mr Serjeant Hullock.—I know what it points at, but I do not see how it is evidence.

Mr Monteith.—I apprehend I am perfectly correct; and I will state the line of evidence, if the witness goes out.

Mr Serjeant Hullock.—I will waive the objection; go on.

Mr Monteith.—You say you called two or three days before this rising, and offered to allow him to keep the gun?

A. Yes, for two days.

Q. Did he keep the gun, or give it you back?

A. He gave it me back, and I paid him a shilling for repairing it.

Q. Did he give you any reason for returning it, because he did not require it for that purpose?

Mr Serjeant Hullock.—Do not suggest reasons.

Lord Chief Commissioner Adam.—Certainly, that is not a question.

Lord Chief Baron Shepherd.—The Court would be sorry to put a stop to any question within any rules of law, but at the same time there are rules of law, founded on principles of sense and justice, which call on us to stop an examination sometimes; now I do not see upon what principle this examination can be admissible. It does not bear on any particular part of the transaction, but it is a conversation between the prisoner and this witness, which might be with or without design, but how is it evidence?

Lord President.—He gave back the gun, and you may draw your inference from that circumstance.

Mr Monteith.—Did you pay him anything for that gun?

A. A shilling.

Foreman of the Jury.—The Jury wish to know, whether this evidence given last is to be received by the Court.

Lord President.—Yes, as far as it goes; you will judge what weight is due to it, of course.

JAMES PARK—*sworn.*

Examined by Mr Monteith.

Q. Where do you reside?

A. At Strathaven.

Q. Do you know James Wilson, the prisoner?

A. Yes.

Q. Do you know that he sometimes repairs arms for the country people?

A. Yes.

Q. And acts as a sort of tin-smith?

A. Yes.

Q. Did you ever give him any arms to repair for you?

A. Yes.

Q. Do you remember any occasion on which you did so?

A. Yes.

Q. When did you do so?

A. It was scarcely three quarters of a year from this time.

Q. Was it some weeks before the month of April?

A. I gave it him rather before harvest last.

Q. What sort of arms was it?

A. It was a pistol.

Q. Did he repair that pistol for you?

A. It was in tolerable good repair; ten minutes or fifteen minutes would repair it; there had been a partial repair, but it could have been finished in ten or fifteen minutes.

Q. It was not fully repaired?

A. No.

Q. Have you got that pistol in your possession?

A. Not yet; I saw it.

Q. Where?

A. About an hour and a half, or two hours after he went away.

Q. Where?

A. At his own house.

Q. Why did you go there?

A. Because I thought I should never get my pistol again; I thought it was taken away.

Mr Monteith.—Our proof in exculpation is closed, my Lord.

Mr Murray.—May it please your Lordship,—

Gentlemen, it is my duty now to address to you some observations upon this case, as it stands upon the part of the prisoner; and I regret, Gentlemen, that, from indisposition, which has prevented me from remaining in Court part of the time, and assisting my learned Friend, I may not be able to state the case in the manner which I should otherwise have hoped to have done. I must therefore request your anxious attention to make up for those omissions, which, I have no doubt, you will find in my statement.

Gentlemen, you have heard evidence led in the course of this day. You have yourselves observed the manner in which these witnesses gave their evidence. You could not fail to remark, that it was impossible, in the situation in which Wilson was, that there should exist any other evidence to prove that he was subjected to force before he left his home. Under the influence of that force—a force of a most painful kind, because some of the persons who assisted in it were his friends and his neighbours; others were strangers, with desperate views, (whether they were treasonable or not, I will afterwards examine) but fraught with the desperate and rash projects which take place when the minds of men are unhinged, and they are disposed to disturb others, or seize what they possess. The best evidence of the nature of their threats would be that of those guilty persons who have fled; and certainly they would not come here at the desire of the prisoner, to swear to a guilt much more aggravated than any that can be imputed to him. You know that it is in the power of the Crown to say to their witnesses, "You may speak freely what will affect yourselves, because whatever you say in this trial, if you make a true statement, you are free from all hazard." That is an advantage the Crown has in all prosecutions, but especially in prosecutions of this nature, where they can let open the doors of the prisons, and bring forward as witnesses all the

persons who are justly or unjustly inclosed, though I do not assert that that power is abused by the learned Lord.

What, Gentlemen, could be done in such a case on the part of the prisoner? We could adduce, not those persons who would have been the best and most distinct witnesses of all that took place, but such as were near, and could give evidence to you. One of these witnesses is a near relation of the prisoner; she is his sister. I do not mean to keep that out of your view; but, where there were no other witnesses to chuse from, you will candidly weigh that evidence. There is no doubt that a sister will have some bias to say what may be of advantage to her brother, but that anxiety is often a disadvantage, instead of an advantage. Examine the circumstances of the case from the beginning to the end, and the evidence she gave;—what is there in this case to make you disbelieve the restraint placed on the prisoner, which is proved by so many circumstances? Keep in your mind what that restraint was, and who aided in it; and I say it was a restraint that he had every reason not to blazon forth or acknowledge, during the short period he was involved in what was done. He was, on the one hand, to find the means of escaping from the immediate danger of the violence of those individuals, who, in some angry moment, or furious transport, might have taken away his life; on the other hand, he felt this was a riot, or might lead to one. While he was under a double apprehension, he did not act with perfect veracity and firmness. I do not produce the evidence with that view. I do not say his words were those of a firm man struggling against difficulty and danger, and pursuing that course which a good subject ought to pursue, who has the firmness to act as you would have done in such a situation. A firm, brave, and honest man would resist the folly and fury of his neighbours, and have a plain story to tell. That is not, however, the uniform character of human nature; his being subject to fear would lead you to expect his conduct should be guided by that fear. It is clear it was fear that made him go with them; it was fear that actuated the statement that he made, and every part of his conduct—you have proofs of it throughout all the evidence. If you will

examine it as one transaction, you can have no doubt in your minds that he was not there willingly, and that nothing that he did while he went out is evidence of that purpose alone, which can enable you to find that he was actuated by that traitorous and malignant intention which constitutes the crime of High Treason.

Gentlemen, that is the question you have to decide; and before considering it further, I ought, perhaps, to supply some omissions which I made in my statement last night. With regard to the question of Treason, I admit, Gentlemen, most freely, that, in the levying war, it is not essential whether the multitude is armed or not. The question is, whether there is force, and what is the intent; and there are a variety of cases that may be stated to you, with regard to the law of Treason, which might startle a person at first sight, but not one of which I intend to dispute, or throw the smallest doubt upon. I believe even learned Judges have expressed doubts with regard to some of them; and if they are stated singly, and in an insulated manner, without considering the history of the country, and the circumstances of the times, they might tend, in some degree, to unhinge our notions with regard to the law of Treason, and make it appear so capricious a law, as not to be subject to any fixed rule.

There is an old case I can quote, and I hope the Court will interrupt me if I make an incorrect statement. There is an old case, where it was held that an insurrection, for the purpose of destroying all inclosures, was Treason. That appears very strange, that an insurrection for destroying inclosures all over the country could be Treason; but at the first dawn of improvement through the country, the people thought their rights were destroyed and invaded by the inclosures, and that they were ruined and impoverished. Inclosures thus became the cause of a great, alarming, and violent insurrection. It does not matter what the peculiar cause is which gives rise to the insurrection, if there is an insurrection of that extent and danger, which threatens the security of the state, which is accomplished by open force, and which is for a purpose that may overset the state. We

know that in other governments, which have not that stability which arises from the freedom and laws of this country, they are frequently overturned on grounds much slighter than this. An insurrection, if it once takes place, if it has a general object, which may make it spread like a flame all over the country, is Treason; and the question as to each individual tried in such a case is, whether he rose in rebellion with a criminal intent?—that of inclosures came to be a matter that threatened the state, and that was as alarming at the time, perhaps, as a question with regard to a disputed succession.

In the time of Charles II. there is a case which, at first sight, appears even more doubtful,—whether an insurrection, for the purpose of destroying brothels, was Treason. The manners of the court were not at that time of the most pure description, and so nothing could afford greater means of popular insurrection, than a rising on a general purpose of that kind, which might spread over the country, and make the government odious, and destroy it. There was a formidable insurrection, an actual levying of war, which it became necessary to check by the authority of the state.[1]

There is a later case, in the time of Queen Anne, which excited a great degree of attention at that period, and which has been much quoted by lawyers since,—I mean the case of Purchase and Damaree. At that particular period there was a great disposition, upon the part of a very large portion of the country, to rise in insurrection, upon the pretext that the Church of England was in danger, and that the Presbyterian meeting-houses should not be tolerated. Accordingly, a most serious insurrection took place in the metropolis of England; the Guards were opposed, and successfully resisted;—there was a contest, in which the mob prevailed, and the government was in danger. This is one of the cases that may be quoted, and I believe were alluded to by the learned Lord in his opening. It appears that, on that occasion, Purchase incited the people to resist the Guards. "He assisted the populace, and incited them to resist the Guards, who then came up to disperse

them; and advancing towards them, he assaulted the commanding officer and others with his drawn sword, and, calling to the rabble, said, "Come on, my boys, I will lose my life in the cause; I will fight the best of them." Here was an actual levying of war in the metropolis; an actual attack of the Royal Guards, and a person leading on those engaged in the combat. It was considered a question of difficulty, whether, because those persons came and joined the rabble afterwards, they were to be considered guilty of Treason, there being no evidence that they were concerned in it before. Where there is an open levying of war, a declared purpose, a battle going on, and a person seeing that, comes forward, and lends his aid against the forces and government of the country, he joins and makes himself a party of those persons levying war: there can be no mistake on his part; he does go freely and voluntarily; he shews his wicked purpose; and he lends his arms to that cause, which is debated by force of arms, while the security of the government is at stake; but it is a very different case where there is no warfare between any person on the part of the government, and a few idle and disorderly individuals who merely march along a road. If a person sees a battle between the Guards and military, on the one hand, and the people on the other, and takes the part of the people, he voluntarily engages in warfare. He by force and strength of arms opposes the authority of the government, and in a manner in which there could be no mistake on his part. He is called upon to pause before he does so. If he does not, he takes a decided part against the government of the country. But how different the question is, when I refer you to the case before you. That there was any proceeding against the government, is a matter of mere assumption. What evidence has there been brought before you to convict the parties? I do not say the prisoner at the bar; but where is the connexion of any of the persons assembled at Strathaven with any design or warfare against the state?

It is said there was a proclamation which was known at Glasgow on the Saturday, and that they were connected with that proclamation. There was an attempt to shew,

towards the end of the case, and the Counsel for the Crown insisted on it, in the cross-examination, as a matter clearly proved, that this proclamation remained posted up in Strathaven so long that every person must have read it; and it seemed to be thought the test of a witness's veracity whether he read it or not. Now, although there was evidence of one, I think of two witnesses, that they saw it posted up, and of one witness that he heard it read, and this was a fact admitting of the clearest proof, very few, out of the great list of witnesses, have sworn to that fact. Strathaven is an open town, through which hundreds of persons pass at all times of the day—if this proclamation had remained a whole day, could there have been a want of evidence on that point? Those witnesses examined, whose houses were assailed, appear to be most loyal witnesses. I do not recollect that Cochrane mentioned it; two witnesses swear they never read it. But I beg you will go through your notes, and observe how many of the Crown witnesses saw that proclamation posted up in the town of Strathaven, where they were residing. I think there were only two brought forward; that was all the Crown could find out of the witnesses who were ready to depone to every thing in their favour, and whom they consider beyond all suspicion. They might have called Captain Crawford, and others, who could tell how long it remained up. The conclusion you must come to is, that it was pulled down as soon as it was put up; that there was some person like Mr Hardie, who pulled down the proclamation in Glasgow. And was it not very proper to do so? Was not it the very thing you would expect to be done? Was it not the statement of the Lord Advocate, that though many be seditious, the great body are in favour of the government, and would view such a proclamation with abhorrence? It was put up, but there is not a shadow of evidence to lead you to the conclusion that it remained long in view; on the contrary, when you compare the evidence of the different witnesses upon that question, you must be satisfied, that there was little evidence of its being put up; there is some evidence of its being read privately by some individuals. John Boyd

never saw it. It was not asked at other witnesses, respectable as they undoubtedly were, who must have heard of it. After it was pulled down, it might undoubtedly be talked of. The Crown Counsel put that as a test of the veracity of Rownie, that he had not seen it. Why is it to be a test of the veracity of Rownie more than of Boyd, or all those witnesses to whom they did not put the question, although it was a point they were most anxious to establish? Was not it (as their case seems to rest on the connexion between that proclamation and what was done afterwards at Strathaven)—was not it more important than what was done at the different houses they went to, while Wilson was certainly absent? How long did it remain up? Could it not have been proved? If it had been there continuously for a certain time, that might have been clearly proved? But this advantage is taken to bring forward a little evidence, with regard to its being there; (and I have no doubt it was there for a short time, and afterwards pulled down,) and they make it the test of the veracity of an individual, that he did not see it, and only heard of it from common report.

Gentlemen, I wish you now to look at the proclamation itself. I have already said, and will always say, that proclamation is, *ex facie*, treasonable; but that is not the question which you have to consider,—it is whether that proclamation is connected with, or regulated the conduct of the prisoner at the bar; and whether you have evidence before you that what those who assembled did was necessarily connected with that proclamation, and proves their adherence to it; and whether that proclamation is to affix a different interpretation to their conduct from what it would have if no such proclamation had been issued? It is not enough to say that proclamation might indirectly produce these riots or disturbances,—it must be the immediate and direct cause—it must be part of the same conspiracy, in which the prisoner was either an original party, or to which he has afterwards acceded.

Look at the proclamation with that view. If a proclamation is made for the purpose of levying war, we will find these persons engaged in the same undertaking—they will

be ready to rise, if they are in the secret, at all events to acknowledge it when issued. It is a very extraordinary thing, that persons engaged in a criminal proceeding of the nature of Treason, who are supposed to be connected together, and have communication together, do not appear, or make any movement. That they are not alleged to have any plan whatever, until after a public proclamation is issued, which is to advertise government of their purposes. If the proclamation is to levy war, and make a rising in the country, are you not to expect there will be some intimation among those concerned—something like a movement in support of that proclamation, before it comes to be known? The proclamation is known, and published, and dated on the 1st of April—is there any movement on the 1st of April at Strathaven? There may be all manner of Treason any where else, but we have no evidence of it there; therefore it cannot enter into your consideration. Mr Hardie swore to a disturbed state of things here, (in Glasgow) but nothing else; and whatever you may have heard from report, the learned Judge will instruct you to dismiss from your view, —it is only what you have heard by evidence in the course of this trial that you can take in the smallest degree into your consideration.

That proclamation appears, according to its terms, to be a proclamation of persons resolved to take possession of the government—to oppose the majesty of the Crown—to levy war against the Crown, and therefore to carry into immediate effect their treasons. It is issued on the 1st of April. Can there be any doubt, that if any persons were disposed to levy war, they would do it immediately on the proclamation? because there could be no doubt that the government had a force they could assemble in a day, certainly in two days, and at all events in three or four days. Is it possible, therefore, that the prisoner at the bar, or any other person, if they had acted in obedience to that supposed conspiracy, would not have moved as soon as the proclamation was issued? This proclamation was put up at Glasgow, and obtained circulation. It is an abominable and treasonable paper; but where is the movement in pursuance of it which

affords evidence of the purpose of levying war according to it? Is there any appearance of a Provisional Government ordering their conspirators to act up to that proclamation? It produces confusion. Like any other great public alarm, no doubt it would have that tendency. It pretends that there are a great many connected in the scheme. If they are acting in obedience to it, they would rise to support it, and assert that they did so. But, on the other hand, it is equally clear that those who had no connexion with it would be exposed to apprehensions—it would produce uncertainty and disorder in many persons. The country would be in a state in which riots, seditions, evil designs, disorders of all kinds—insecurity of property, would arise, as it always must, when there are apprehensions of public troubles—when the security which is established by the laws comes to be disturbed by those apprehensions weighing on persons' minds. There was a state of general alarm—more than that I do not see proved by any evidence. Some disturbance is to be expected, although there is no person in league with the proclamation. You do not see any thing done till Monday evening, when there is a meeting at Three Stones—a meeting, attended by persons who might be disaffected, most of them, perhaps, evil-disposed and turbulent men. But it is evident that is the beginning of their deliberations. They are not persons acting under a previous concert;—it appears to have been a meeting where persons assembled on one side gave one opinion, and persons assembled on the other, who had mischievous designs, gave theirs. A division of opinions took place. The Crown Counsel, however, were not able to bring evidence that any thing was said at that meeting at Three Stones with reference to that proclamation.—Had they not the most ample means of doing so? had they not every means of stating every thing that was actually said? Is it alleged that any one person said there was such a proclamation in existence? There was not an attempt at any such evidence, but there was a witness asked what was his reason for opposing their taking up arms; and you have the private thoughts of that witness, which were, that he thought their borrowing arms at

that period might be considered as an improper, or seditious, or dangerous measure, more so than at any other time. He is asked, "Why do you think borrowing arms dangerous?—people may borrow or hire arms without danger." Then this witness says, "I thought in my own mind that this was a dangerous time, and people might be liable to the charge of sedition, or evil doing, if they borrowed arms at such a time, after such a proclamation had been issued. But there may have been five hundred proclamations at the time; each individual may have their particular motive for considering the borrowing arms bad; but is there any reason for inferring its nature, when the witness is not able to say that Proclamation was mentioned or alluded to by one individual? There is the utmost latitude given to evidence for the Crown. The Crown Counsel are entitled to penetrate into the thoughts of the witness, if it is against the prisoner at the bar. I do not much object to any rule of law which lays evidence more fully before you; but having what you find is only a private thought, not told to the meeting, that does not prove a connexion between that meeting and this publication at Glasgow on the Saturday, which would naturally have produced a movement on the Saturday with all those concerned, or at least on the Sunday or Monday. Here is a meeting of deliberation on the Monday, and some persons propose seizing arms, and others object to it. This is brought as evidence against my client—he was not there; —is not that evidence for him?—Nothing passes there that connects that meeting at Three Stones with the proclamation, which can make you believe it is in pursuance of that proclamation that they march out, any more than one event not in direct succession is connected with another. If there had been great want and distress in the country, it would probably give rise to those meetings—because when people are in that situation, disturbances usually take place; but that it was connected, as a treasonable design, is not to be believed, as the Crown might have brought evidence of that connexion if it existed. The facts, as you have them, afford clear evidence, that must convince every

person, that there is no such connexion as can authorise a legitimate suspicion, far less operate as proof to establish a conspiracy.

If there was this treasonable design of acting under that proclamation upon the Monday, why does no rising take place, if not then, at least on the Tuesday? There is another interval, and then comes the Wednesday. Upon these transactions I formerly said a great deal; and you have since had the evidence of those persons who came into the house, and the violence they offered to my client, and the terror they produced. I say, in this disturbed state of the country, such events are likely to take place; such riots, and far more formidable riots than that, have frequently occurred, and nobody has ever dreamed that they were High Treason; I mean far more formidable than fifteen men forcing my client to go with them on the road, and his leaving them —declaring his wish to leave them on the way, and believing that his life was threatened. Some of these persons were his neighbours and friends, and he was unwilling to proclaim the restraint, at the same time he was afraid of the danger; he acted under fear, as others act under that impression. Far be it from me to put this case on a different footing from what it appears fairly and truly to stand on. It is a plea you are bound cautiously and truly to investigate—but it is one which you must give due effect to —it undoubtedly carries with it a certain measure of degradation on the part of the person who makes it. But that is not the question—it is not whether there is weakness or timidity on the part of this individual—it is not whether his conduct is the best or most examplary that could have taken place—but whether there is the guilt of Treason on his part—whether he voluntarily committed any overt act of Treason. On the Wednesday they came into his house; there is no evidence on the part of the Crown, but of there being great noises, and that persons went into his house. Many of the Crown witnesses have not been examined who might have spoken to the matter; but that is the evidence, collected with the greatest care; and on the Wednesday there

is nothing in evidence against the prisoner, but that persons were seen coming in and out of the house. We have brought such evidence as we could. It necessarily consisted of persons connected by relationship, but we must take what evidence we have; and I ask you whether, in the circumstances of the case, it was possible to bring before you more clear or more convincing evidence that he was subjected to the restraint arising from intimidation. Rownie is a person whose evidence is perfectly clear, and I trust to your recollection of it, in which I am sure every word favourable to the prisoner will be preserved. During that night there is not the shadow of evidence affecting my client; these persons are acting like lawless and turbulent persons. There has not been a shadow of evidence of any order from a Provisional Government, with which he had any connexion? —there is nothing of the sort, but that the country was in a very disturbed state—that there were reports of tumults and sedition—of houses being burnt, and of Glasgow being in confusion. Such reports prevail when the country is in a state of turbulence; there are always persons who hope to gain something, or make themselves of importance during a period of confusion. A country in that state must be exposed to the movements of some disorderly persons. If Wilson had been appointed leader—if he was a person who aided this business, would he not have been seen on all these various occasions? would he not have been a party to these measures for robbing houses—for obtaining arms, or have used his own influence to obtain them, which he might have done in many cases? A short time before, he had repaired a gun that was sent to his house; I am only entitled to state, that a person sent a gun to be repaired, and he gave it back to that person a short period before these proceedings; and you are to draw your conclusions from that. But is not that a most convincing fact? If he had had these treasonable purposes in view at that time, would he not have retained that gun? would he not have endeavoured to borrow arms from various persons in the neighbourhood, and to have used those means which are said to

have been used to carry on these plans? He was in that situation in which he might have obtained arms;—there is no attempt of the sort, and there is clear evidence that a pistol, which had been given to him to repair, remains in his house at the very period, and was seen there within an hour or an hour and a half after these persons left Strathaven.

What is Wilson's conduct then?—he has a sword—he is forced out with that sword; but is he ever seen as a leader, or a person inciting sedition or rebellion? All that could be done was inciting, or mere submission, unless you come to actual warfare; there is no opposition of a magistrate, or any person of authority, or to any troops. There is no design to attack troops, or take possession of a town, or to wage war, or any of those acts which amount to a levying of war, against the Crown;—on the contrary, this person comes out, according to the evidence you have, with threats and restraint offered him, subject to the terror which he felt from those persons having fire-arms, who might in a second deprive him of his life, and who were certainly not persons who ought to have been possessed of such weapons. He comes forward, by the evidence of every witness, a person evidently unwilling to contribute to their objects, whatever they were.

You ought here to consider what is the evidence that these persons ever were engaged in a design to commit High Treason? I admit that levying war for a general object, for destroying the government, for interfering with the legislature, or taking possession of the government, is Treason,—but where is the evidence that these twelve or fifteen men, with so many guns or pikes, who only move along the road for a short time, were engaged in a design of taking possession of the government? I have tried, during the little time I have had to consider this subject, to find any case that had any resemblance to it. In all those cases that may appear at first as strange instances of Treason, of insurrections for destroying meeting-houses, or for destroying inclosures, there were a number of people who opposed the King's troops.

They were engaged in warfare with the King's troops, acting under the authority of the state, but I do not recollect a single case, where people, merely going along the road, some armed and some not armed, and walking a certain length, is held to be Treason. If there was a clear proof that they meditated to take the life of the Sovereign, or that they were marching to take possession of the Castle of Dumbarton, or any design of that nature—you might say they were going to seize the Castle of Dumbarton, but they were stopped in the road, and therefore we hold that they were engaged in levying war, although their hearts failed them, or other circumstances changed their intention. But here there is no evidence that they ever had any such treasonable design. They might mean merely to make a parade of themselves, or to protect those who were attacked, or to plunder those who were rich. Each of these suppositions are more probable, than that they meant to destroy the state. To aid the prosecutor's charge there was nothing but this proclamation, published at Strathaven a certain time before; and a number of persons going along the road, without knowing what they were to do. There is no proof of any design or conspiracy, or any thing like a story you can put down in your minds; you cannot say that that party were marching to carry any alleged conspiracy into effect.

In other trials for Treason there has always been an immediate purpose of action charged—such a design, as though, perhaps, very rash or imprudent, was at least intelligible, and which, therefore, the Jury might connect with a conduct which might otherwise be innocent. There must be such a purpose, forming part of a design of a general nature, proved to your conviction, or you cannot say it was levying war. I have tried to find a case resembling this, and I do not recollect any that seems to approach it. That which most resembles it occurred in the trial of Mr Stirling of Kier, before the English Treason laws were introduced into this country, where it appeared that the Honourable Charles Fleming, who was the

brother of the Earl of Wigtoun, and other gentlemen, had, in the year 1708, assembled with armed men, and marched through the country. There was then a French fleet, with the Pretender on board, in the Frith of Forth, which was compelled, by the arrival of the British fleet, to go north, and a landing was expected to take place at Aberdeen. Gentlemen, I am afraid I am wasting your time, in alluding to such a case. It was not a party of a few humble individuals at Strathaven who came forward; it was not at a time when the country was at peace, and nothing to be dreaded but internal tumult. They were gentlemen of family, and great influence in the country, who marched through the country, with their servants, with no visible object but to support the Pretender, but they were acquitted. It was under the old Scotch law, but our laws of Treason were more severe than those introduced from the sister country. They were judged by a jury of their equals; and though no person can doubt they were engaged in the service of the Pretender, they were acquitted, because their acts were not sufficient to make a jury say, they marched for the purpose of levying war, although there was a French fleet and a foreign Pretender on the coast. I see in the jury a person connected with that family, Stirling of Kier, and I do not wish to dwell longer on circumstances which afford a far more pregnant proof of Treason in those days, than those which now put the life of this poor man in hazard before you.

As to trials in England, I call upon the learned Sergeant, I call on you, with your knowledge of the history of this country, to refer to any thing which furnished matter even of accusation for Treason, and say, whether what has been proved before you on this trial, as it will stand in history, will justify a trial for Treason in any court whatever. There has always been some project or plot proved. This is the first attempt that has ever been made to make a jury find, that whatever tumultuous disorder takes place is to be held as explained by a proclamation posted up, though no connexion whatever is proved with it. The learned Lord said, though it shall be admitted that a project is foolish, that does

not make any ground of defence;—if this project was ever so foolish—if these persons had gone to seize the Castle of Dumbarton, or to murder all the military at Glasgow, then he would have a case of that description, and he might suppose I was reduced to say, here is a plan so absurd, you can give no credit to it whatever; but I say there is not a shadow of evidence of any plan whatever, or of any design. A design of a public nature is necessary to constitute Treason; but there must be a specific design of a treasonable nature, to prove an overt act of Treason to which the punishment can attach. Going with others on a road—leaving them as soon as he could—what is there in that that makes Treason? Men of sense and of understanding can never say that is Treason; but there might be evidence that might tend to affect your minds, and give it a different aspect. You might suspect that they were engaged in a different design, but that must be proved. I have heard no story told, to enable you to entertain that suspicion. There was no design stated by the learned Lord, but all he said was, the design, however foolish, you are not to disbelieve. If a person has conspired to murder the King and all the Royal Family, it is no answer that it is absurd. The Jury will weigh the evidence; in such a case they will not willingly come to such a conclusion; but here there is not a shadow of evidence, of any kind, to prove any thing of the sort, though the Crown has witnesses of all descriptions in their power, and although, from the situation of the country, there are so many persons who have fled from it, who would be glad to purchase their safety by betraying the crimes of others; you have no evidence of that description, and, therefore, there is no overt act to which you can impute any such design.

In Lord Hales's Pleas of the Crown, I have observed a case which is also mentioned by Lord Coke, as having occurred in the reign of Henry IV. He says, (p. 136) "It appears by Walsingham, sub anno 1403, a great rebellion was raised against Henry IV. by Henry Percy, son of the Earl of Northumberland, and others. The Earl gathered a great force, and actually took part with neither, but marched with his force, as some

thought, towards his son, and as others thought, towards the King, *pro reduitegrando pacis negotio*," for the purpose of mediating a peace between the parties. " He was hindered in his march by the Earl of Westmoreland, and returned to his house at Werkworth—the King had the victory—the Earl petitioned the King—the whole fact was examined in Parliament—the King demanded the opinion of the Judges and his Council touching it—the Lords protest the judgment belongs in this case to them—the Lords, by the King's command, take the business into examination, and, upon view of 25 Edward III. and the Statute of Liveries," they adjudged that that which was done by the Earl was not Treason, nor felony, but only trespass, for which trespass the said earl ought to pay a fine and ransom, according to the pleasure of the King; but Henry Percy, the Earl's son, was attainted of treason. Lord Hales adds, " It appears not what the reason of that judgment was, whether they thought it only a compassing to levy war, and no war actually levied by him, because he had not actually joined his son; or whether they thought his intention was only to come to the King to mediate peace, and not to levy a war, nor to do him any bodily harm; that it was indeed an offence in him to raise an army without the King's commission, but not an offence of High Treason, because it did not appear that he raised arms to oppose the King, but possibly to assist him; but whatever was the reason of it, it was a very mild and gentle judgment, for the Earl was doubtful of a more severe judgment;—he returns thanks to the Lords and Commons, *de leur bone et entyre coers a lui monstre*, and thanks the King for his grace." I read the latter part of this passage, Gentlemen, because I have no doubt an argument might be raised against me upon it; and I was bound to state what was against me, as well as what was for me. Examine the case, and consider how far it was a doubtful case. Harry Percy, the greatest warrior of his time, was engaged in war with the King—he fought a battle with the King, in which the King's life was in danger—he was defeated in that battle—the Earl, his father, comes with a great armed force through the country, and it was adjudged all he had done was only

a trespass, and not a treason. There was great benignity in that judgment; the Lords allowed the doubt to weigh in their judgment—it was certainly a mild judgment, because there were ingredients, in point of fact, which weighed strongly in the scale to prove a treasonable intent, in levying an army in those circumstances. His son was actually engaged in the rebellion. His whole conduct proved, that he raised an army, not for the purpose of assisting the King, but to assist his son in levying war against him. But that shews the mild interpretation given to the law of Treason by Parliament in ancient times. I do not ask an interpretation of that nature, but I only require that there should be some pregnant proof against persons accused, before they are to be convicted. What is the situation of these fifteen persons, compared with that case?—an army in the field, to which he was coming with aid. There was no other plea than this which mercy alone could give weight to—that there was still a possibility that he was coming to assist the King, or to mediate for his son. The case is considered one of very great weight, for it is also stated by Lord Coke, in terms more favourable to my argument than the passage I read from Lord Hales's Pleas of the Crown.

I stated the least favourable report of it from Lord Hales; and I read the passage that stated the doubt, whether it had not gone too far in favour of mercy, while there was so much ground to conclude he was guilty of Treason. Lord Coke narrates it thus—(p. 16). "In the Parliament holden in the fifth year of Henry the Fourth, the Earl of Northumberland came before the King and Lords in Parliament, and by his petition to the King, acknowledged to have done against his allegiance, and namely, for gathering of power, and giving of liveries, whereof he prayed the pardon; and the rather that upon the King's letters he yielded himself, and came to the King unto York, where he might have kept himself away." If the matter had stopped here in either case, it would have been matter of pardon; but the King did not grant the pardon, for it was referred to Parliament to pronounce on the case, and accordingly they in express words found it was not treason, but only trespass; "the which petition the King

delivered to the Justices, by them to be considered." The first intention was that it should be judged in the ordinary courts of the realm; "whereupon the Lords made protestation, that the order thereof belonged to them as Peers of the Parliament to whom such judgment belonged, in weighing of the statute of 25th Edward III. &c., and they judged the same to be no reason nor felony, but only trespass, fineable at the King's will." Here, Gentlemen, is undoubted authority on that matter, that there was a judgment in Parliament on that very point, finding specifically, that what was done in those circumstances was no treason—was no felony—was only a trespass and misdemeanour.

Now, Gentlemen, what is there here to make you come to the conclusion, that these persons going along the road for a certain distance, were engaged in a design of carrying on some treason, which is not described or explained—that they were coming to destroy this town, or burn it, though there is no proof of that. If I chuse to state the contrary, that they were coming to support the authority of government, what evidence is there against it? They seize arms, which is an unlawful thing, but they may seize arms to support government as well as against it. What is there to shew their design was to act against government, or to overturn government, more than to act in its favour? What is there more than the attempt now made to couple their movements with this proclamation? But this proclamation is likely to produce tumult in others, who might have very different objects in view, and these persons are coming against them; is there any thing in the course of the march to lead to an opposite conclusion? There is a great deal said of a flag, on which was written "Strathaven Union—Let Scotland be Free, or a Desert." And I must here observe, Gentlemen, that in the evidence of the first witness on the part of the crown, he distinctly swore, that this flag bore the date 1819. There was one witness examined who had lived in Strathaven; he was examined to say, whether he had seen this flag before; but the first witness said (and it seemed to me it would be wasting time to put it to every witness, as it came out from the lips of one witness,) it was "Strathaven Union Society,

1819,"—that is the evidence of Boyd. It is in my notes, and in the notes of my learned friend, and I presume I am not inaccurate in making that statement.

Lord Justice Clerk.—Yes, "Strathaven Union Society, 1819."

Lord President.—On the other side, "Scotland Free, or a Desert."

Mr Murray.—Now, here is a circumstance to prove Treason, that on this flag there was, "Scotland Free or a Desert," with which they marched on; and you are asked to receive this as evidence, that persons going with this flag are engaged in a treasonable conspiracy—is that an opinion which any man is not entitled to avow? an opinion which I openly avow before you, and I trust it is the opinion of every honest and loyal man in the country. I say, it is not merely the opinion of persons speaking from warmth and heat on the occasion, but it must be the opinion of every sound and reflecting mind—of every person who has studied our history, or compared it with that of every other country. Is it our soil, our climate, our rocks, our marshes, that prevents this country from being anything but a desert, with all the disadvantages of a miserable climate, remote from the rest of the world? Was it not, at the period of the Revolution, visited with famines, that swept away hundreds and thousands of the people? What, Gentlemen, can it be now, that produces the wealth, riches, and improvement around you—the cultivation of the vales, the verdure that clothes your mountains, all that traffic that adorns and enlivens your rivers, but the course of a free government established among you? and whenever that free government is lost, it will again become a desert;—that must be the sentiment of you all, and of every reflecting man in Scotland.

But it is said this motto is assumed with an evil purpose. No doubt the best sentiments may be used with an evil purpose; but if a sentiment which is right, and ought to be nearest the breast of every person, is put on a flag, are you to make that an argument for believing that these persons are traitors—that they intend to destroy the country altogether, because they have adopted a sentiment, which every person may be proud

to avow? Yet this is one of the inferences—this is one of the mill-stones they wish to hang around the neck of this unfortunate man, to subject him to the peril of his life. Who can be in safety who will not be in the same situation that has been described by the ablest commentators on the statute of Edward III. Before that statute, no man's life was safe—no man felt himself secure against the pains of Treason, because with strains of wit and argument, any thing might be twisted into Treason; and if this net is to be used to sweep away humble and poor individuals, there may come changes of times. Governments less virtuous and lenient than the present there may be—(I state it not as feeling any particular favour for them)—such governments as have existed in this country, but from which I trust the present government is very far distant indeed. If convictions could be obtained on such grounds, the most innocent men might be accused of treason. No man's life would be safe—no man who might not be brought as a prisoner, and condemned by the heated passions of a jury, who might be supposed to minister to the Crown on such an occasion.

But there is something more in the case. There is an account of words uttered during a private conversation. One witness—I allude to the evidence of Mrs Simmonds—says, (I did not mean again to read her evidence,) that a conversation took place with Wilson; and he was asked, "What do you, who are an old reformer, think of the radicals now?" and he said, He hoped they would win—he hoped they would recover their rights. This is the evidence of one witness, of a witness who, I believe, Gentlemen, has misrepresented the conversation, and had the strongest motives to affect her mind with regard to her recollection of it, and it is evident how few words would give a different turn to her evidence. But what evidence is that to prove a purpose of Treason? what evidence is there of any allusion to the proclamation at that period? what evidence is there, that there was any design to overturn the government, or of any rising? It is a conversation that takes place on the Monday, before the Three Stones meeting; and you are called on to give such an interpretation of this evidence, as

will affect every other transaction which took place—that he had said they could not die in a better cause. How fortunate it is that he had not said some of those sentiments, which must be familiar to all of you, as have been uttered on various occasions! Persons may state the cause erroneously, —perhaps seditiously; they may give what colour to it they choose, but such idle words will not establish a design of High Treason, which is the only matter you have to try. But suppose he had said, this is the cause for which Hampden fell on the field, and Sydney died on the scaffold,—could any person be tried for that? Persons of the highest rank have often used these expressions, and it may descend into familiar foolish conversation, like the clothes of the higher ranks which descend to the lower, and are sometimes worn by them without befitting their station. Judge Foster observes, (p. 200,) with regard to words, "As to mere words supposed to be treasonable, they differ widely from writings, in point of real malignity and proper evidence; they are often the effect of mere heat of blood, which in some natures, otherwise well disposed, carrieth the man beyond the bounds of decency or prudence. They are always liable to great misconstruction, from the ignorance or inattention of the hearers, and too often from a motive truly criminal." He then says, (p. 202,) "Nor will every rash, hasty, or unguarded expression, owing, perhaps, to natural warmth, or thrown out in the heat of disputation, render any person criminal within these acts; the criminal doctrine must be maintained maliciously and advisedly." These are the sentiments of Judge Foster. What was the nature of the conversation? There was a woman whom he might wish to provoke or alarm. How often persons in his station start sentiments different from their own, to provoke another! I do not see the slightest reason to suppose, that after this old woman went out of the room, with whom he was not in good terms, he might not utter most sincerely to those persons who remained the very opposite opinion, declaring, as I believe he did, again and again, against any measures of blood or violence, as abhorrent to his nature. There was another person present who has not been called. A person who continued there all along could

alone prove a deliberate purpose in such words. If you suppose the sentiments to have been treasonable, she is not in their confidence, or privy to their design, but in the situation, of all others, in which he might say what was most absurd or disagreeable to this woman, to get rid of her. The assertion, that these words were uttered with a treasonable purpose, is opposed by all the real evidence in the cause—opposed by what took place that very night, when it is proved that there was a meeting, and he was not there. It is not merely proved that he was not at that meeting, but it is proved he goes to the country in the forenoon of the day—he remains there during the greater part of the day—he leaves it at night, and he had a distance of four or five miles to come home; and there is not a shadow of evidence or ground for surmising that he had any sort of connexion with that meeting. Surely facts must be stronger than words casually uttered, as they might be for the purpose, perhaps, of ill-timed pleasantry, to provoke a woman improperly; but this can never bring a man's life into hazard.

Gentlemen, on this point I would wish to refer you to the opinion of my Lord Chief Justice Eyre, as delivered on the trial of Horne Tooke; and surely, when I refer to so great a judge, I can have no intention of selecting law to withdraw your minds from the verdict you ought to pronounce. There were at that time a number of individuals of most eminent abilities, that gentleman in particular, Mr Horne Tooke, of most distinguished talents, tried for High Treason; there was a great variety of proof against him. The trial, if printed in the ordinary way, would occupy many volumes. The evidence was stated to the Jury by the Judge, and these are the remarks he makes when it comes before them. But now, Gentlemen, comes the great question for your consideration—was it a convention of this nature? Judging upon the whole context of it, these transactions one can hardly believe, even though there is evidence of it, that a parliamentary reform in the House of Commons was the object; one must suspect that more was intended; but the question is, what more was intended, and what was the precise object? for you must see that it is not

will a
had
nate
whi
va
—
c

enough that suspicions arise in your minds, as to the objects which these persons had in their minds, that you incline to think they must have meant more than they professed, respecting parliamentary reform—that their measures were not at all proportioned to this end. Therefore, arguing with them upon the supposition that they acted consistently—that they must have meant that which is imputed to them—such grounds as these warrant suspicion, but undoubtedly do not constitute proof; and therefore you must distinctly see that they had more in view, and that they had this particular object in view, to hold a convention, for the purpose of usurping the powers of government. Gentlemen, there is not, as this Judge says there was there, a case created of suspicion; I say, here there is nothing to create a suspicion in your minds of there being High Treason intended by any individual, because there is no such preparation—there is no such movement—there is no such levying of war—there is no such object for the levying war, that you can impute any design of that kind. But even if there were suspicions in your mind, (and I have never been able to figure to my own mind any definite object they attempted to attain,) but if there were suspicions, that would not be enough; there must be such proof as leads irresistibly to that conclusion.

The same Judge observes, "And it is certainly true, that if you look at this case, in the exterior of it, and upon the outline which I have stated, there is great ground to impute this to those societies, and it would be difficult for this prisoner, in particular, to take himself out of that implication. And it undoubtedly is true, that the conduct which these societies carefully observed, was a conduct that must necessarily create great alarm in the country—that it must have called upon the government of the country to be very vigilant, and to take very active measures; that it does justify the putting the persons accused into that situation in which they now stand, calling upon them to explain to a jury, even at the hazard of their lives, and honour, and every thing that is dear to men—a conduct liable to so many just exceptions. But that this conduct may yet be explained, and that when the question is with the jury, whether that which

all mankind might be justified in suspecting, does really turn out to be sufficiently founded in fact, and to be so distinctly proved, as to warrant a jury, who are bound to acquit, if there remains any doubt upon the case; in finding a verdict of guilty is quite another consideration." Gentlemen, allow me to repeat these words, "whether that which all mankind might be justified in suspecting, does really turn out to be sufficiently founded in fact, and to be so distinctly proved, as to warrant a jury, who are bound to acquit, if there remains any doubt upon the case; in finding a verdict of guilty is quite another consideration." It is a totally different consideration, according to the opinion of the Judge who presided on that occasion, whose authority will not be disputed, whether there is a suspicion that the whole world would conceive to be just and well-founded, which might justify parliamentary measures, and every reasonable precaution, but that would in the smallest degree authorize jurymen to pronounce a verdict of guilty.

Gentlemen, I intended to have read a passage from the trial of Brandreth. I have the same passage marked, which the learned Lord read, and I again submit it to your consideration as one which I in no manner depart from, and which I wish you to take into consideration. While you hold the law to be such, you will weigh in your breasts what is the intention under that law, proved to you by any of the facts which have come out in evidence. "That such an assembly,"—I think that was the place where my Lord Advocate began, page 298,—"That such an assembly, acting in such a manner, and for the accomplishment of such an object, is a levying of war against the King, who is the head and chief of the government, is a proposition which no Court or Judge, nor any writer on the law of England, has ever questioned; in every Court, and on every occasion where the point has arisen, this proposition has been laid down and acted upon as a clear and unquestionable proposition of law. It is not creating a new Treason out of offences provided for by other statutes, for these statutes will all be found, upon close examination, to embrace offences far short of this. It is not made an ingredient in

the offence described in any one of them, as far at least as I have been able to learn, that the persons who are the objects of them should assemble with arms in their hands; an armed assembly may perhaps be within the purview of some of these statutes, but an unarmed assembly may also under certain circumstances, whereas the levying war against the King can be accomplished only by an armed assembly. The distinction, Gentlemen, as it appears to me, is plain and clear, and I cannot see that this case does involve in it any proposition of law on which any lawyer can doubt." After stating, that in a case where there had been the utmost violence, where there had been the most ferocious and bloody contest, a case so different from this, that I could not wish for more than that you should read the evidence, and compare it with this, in order to give me the certainty of a verdict. He says then, Gentlemen, "Such being the law, as it may be applicable to the case, several questions will arise for your consideration, for your judgment, and for your decision; with your judgment and your decision upon them, it is far from being the intention of the Court to interfere. You have been very properly told, that you are to consider in this case, first, Whether there has been, in point of fact, an insurrection of armed men, committing acts of violence and outrage; has such an insurrection actually taken place? If it has, then, secondly, What was its object?—was the object of the insurgents to assail and endeavour to overthrow the established government of the state? If there was such an insurrection, with such an object, the crime of High Treason, in levying war against the King, has been committed. But then another question arises also for your consideration. Was the prisoner at the bar—for his case, and his alone, is now the object of your inquiry—was the prisoner at the bar a party concerned in that insurrection, and having, in common with others, that unlawful intent?" The first point then is, whether there has been an insurrection of armed men, committing acts of violence and outrage—has such an insurrection actually taken place? Now, did such an insurrection actually take place in this instance? Can you, as men of sense or understanding, hold that these persons, issuing out of that house on the only oc-

casion on which he was present, (throwing aside for a moment that he did so from constraint;) but was there any thing in their issuing out, and going along—meeting with no contest—fighting with no person—opposed by no force—ordered to disperse by no magistrate,—was there any thing that amounts to an insurrection of armed men? Some had guns and some pikes; there were ten or fifteen men going along the road in mid-day, but does that amount to an insurrection? Have you a conduct amounting to an insurrection, or have you evidence of any views they intended to accomplish, to give you the smallest belief of any preconceived design that amounts to an insurrection? Take it in either way; take it by what was done at any time when he was present, or any thing proved of his plans. There is no proof of any insurrection for any object of that kind; and there is no proof of any actual levying war, or of any thing amounting to an insurrection.

Gentlemen, there is another authority I mean to refer you to—Lord Ellenborough's charge to the Jury, in the case of Watson. In that case there was evidence given which certainly did not satisfy the Jury; but there was evidence of a design to take the Tower, to destroy the barracks—proofs of the conspirators being in the Tower, and attempting to seduce the soldiers. They actually came into the city of London, and attacked the gunsmiths' shops, and there was one man shot. Some of the shops were shut up before they approached, and some of these shops were broken open, and the arms taken out. There was a tri-coloured flag, under which they moved; the movements were deliberate and intended, at least there was evidence to that effect, and the plans arranged at previous seditious meetings, in which they had been again and again discussed a long time before, and different periods fixed for effecting their purpose. The seditious speeches at the meeting were proved, and one of the party cried out, "All those who will follow me, come up;" and they cried, "To the Tower." They went through the city of London to the Tower, and summoned the Tower to surrender. There has been no case tried, in which there has not been some design to give it the character of High

Treason, or else of actual violence and force, such as must admonish every person that beholds it that Treason is intended to be carried into effect by those engaged. I do not mean to say that arms are necessary, because an immense multitude of men may prevail and overturn the government without arms, provided the numbers are so great as to compensate for the want of arms. But here are fourteen men, one or two muskets or fowling-pieces, one or two pikes. Is this evidence that they are going to overturn the government of the country? The whole is to be overthrown. They must say there was a treasonable design, or that this party must necessarily be marching to take possession of the government by force of arms. There is no other party proved to be connected with them in the most remote degree; and yet upon that alone you are to hold there was such a levying of war as was to overturn the government.

Lord Ellenborough said, upon that trial which I have referred to, "If this is merely a temporary ebullition of a prevailing spirit of tumult, violence, and disorder, or any thing but an attack aimed against the royal authority of the realm, it would not be Treason, and no person who administers the law will ever, I trust, attempt to confound tumults of the sort I have mentioned with Treason, which is an attempt to overturn the established government of the country; and I accede to the proposition laid down by one of the learned Counsel for the defendant, that the question for your consideration is, Whether this be or be not a conspiracy to overturn the government of the country? That is the question, and that is the only question, you have to try, and to the determination of which, after having heard the evidence detailed to you, you will deliberately apply your attention." Where, Gentlemen, is there the evidence of this conspiracy? Persons were tried at Edinburgh, Watt and Downie, for Treason, and you may have read their trial; but there was evidence of a settled, deliberate purpose of attacking the Castle, of placing guards in different positions; and there was a design not merely of overturning the government, but an arrangement of the means by which it was to be effected.

Gentlemen, you are now considering whether there was

Treason against the majesty of the Crown; whether the persons who assembled at Strathaven had conspired to overturn the government of the country. What is there to lead you to hold that there was such a conspiracy or design? Disorder, malignity, or impropriety, or other bad designs, are not enough. You may say there is a suspicion of Treason, though really I do not see any thing like a suspicion of it on the part of these people. What ground is there for fancying, that they marched to overturn the majesty of the Crown, the authority of the government, and to combat the troops that would be assembled in every district to oppose them?—are you even to suspect it? They might have a hundred different designs, rash and foolish enough to benefit themselves, but where is any thing done—where is any force assembled, with which they are shewn to be allied, that gives what they did the aspect of levying war against the Crown? There was every attempt on the part of the Crown Counsel to make the most of it. In examining some of the witnesses, who said they went three abreast, one of the Counsel said, "This was your advanced guard." But what is it, to make the most of it? Some swore that they went irregularly, others, that they went regularly. Let them go in the finest lock step, or according to the best system—that they were levying war is a proposition not to be maintained. There was something on the table yesterday, which I do not see produced to-day —some sticks or poles. I supposed there was something to be proved as to them; I never happened to see them in a Court of Justice before. They are perhaps some new-invented fasces to decorate a royal commission; but I have not seen them this morning; and therefore I trust they will have no weight with you. Whether they are for some purpose of future stage effect, I am not aware, but certainly they have failed of any upon this occasion.

Gentlemen, there is one trial to which I have often referred, and to which I request your particular attention—I mean the trial of Lord George Gordon for the riots in 1780. The circumstances are probably known to you all. You know that those riots placed the populace in possession of the greater part of the city of London; that the houses of

persons of the highest rank in the state were attacked and plundered; that the house of the Lord Chief Justice of England was attacked; he was obliged to leave it; his papers were destroyed, and the house was burnt; the gaols were opened; prisoners were set free; and the Houses of Parliament were threatened by a mob of about forty thousand people, regularly assembled, who marched down and took possession of the lobby of the House of Commons. The Members of that House were exposed to insult and outrage, nay, to well-grounded apprehension of their lives. This became, as it ought to have done, the subject of grave and rigid inquiry; and an individual of high rank was placed at the bar of the Court to take his trial for the crime of High Treason. There was given in evidence that there had been a previous advertisement; that this advertisement was directed at a meeting at which he was present, which declared that there was no room in London which could hold forty thousand men; that they would therefore assemble in St George's Fields; the order in which they should assemble was fixed; it was declared that the London division should take place on the right, the Southwark in another direction, the fourth division on the left, and that they should wear cockades to distinguish themselves from Papists, or those who supported Popery;—this was done in the metropolis of London. It was proved that Lord George Gordon said to them, "I will not go down to the House, and present your petition, unless there are twenty thousand of you to accompany me." He went with forty thousand, with cockades in their hats, and they occupied the avenues of the House. He also referred to riots and seditions that took place in Scotland at that period; before going to Parliament, he talked of those riots. He summoned forty thousand people to meet him; he declared he would not go with less than twenty thousand; there is evidence that they filled the lobbies; that he came out and talked to them; there is the evidence of a doorkeeper of the House of Commons, who says he communicated the deliberations of the House——

Lord Chief Baron Shepherd.—In that case it was admitted he went with those persons only as petitioners.

Mr Murray.—I am going to that.

Lord Chief Baron Shepherd.—But when you are citing cases, you should state all the facts. Nobody doubted, that if Lord George Gordon had went with those persons to overawe the Parliament, that would have been levying war, and he would have been one of the persons doing it. The case was this: that Lord George Gordon went merely with the persons to petition, without any intention of overawing Parliament;—that was the ground of decision in that case. My reason for interrupting you was, that there might be no ground for misunderstanding the decision.

Mr Murray.—I have no feelings upon the interruption, but those of the most implicit respect. Gentlemen, nothing could be so painful to me as to suppose I could have said any thing which could occasion the necessity for any of the Bench to interpose.

Lord President.—The Court will take care of itself; you need not go into that.

Mr Murray.—But I wished to state the law as laid down most correctly. Now, to quote it from the speech of Lord Mansfield——

Lord President.—Did Lord Mansfield try that case?

Mr Murray.—Yes, my Lord; and I have the notes of Lord Mansfield upon that very occasion; Lord Loughborough charged the Grand Jury. Gentlemen, I will state the law as it was laid down in that case; but I was merely introducing what I was about to state, with the view of rendering the statement of the law more intelligible. I did not in the most remote degree intend to argue, that what was done on that occasion with an evil intent would be any thing short of High Treason; but I was shewing the facts proved against Lord George Gordon on that occasion, which came before the Jury, and the directions Lord Mansfield gave to them to form their opinion on the case, because I conceive the same directions ought to be given to assist you in forming your mind on the case before you. But, in explaining the case to make it intelligible, I was stating generally some of the outlines of the facts, which were—that Lord George Gordon had made those declarations; that those facts were proved, that he said he would not go down without that number of people——

Lord Chief Baron Shepherd.—I doubt whether you are pursuing quite a regular course. Whatever was laid down by any Judge in that case, or in the trial of any other case, it is fair and regular to quote as the doctrine laid down by the Judge or Bench; but if you state to the Jury, that such and such facts were proved on such and such a trial, it is necessary you should make out that by the proof of the facts in evidence. The doctrine laid down by the Judge, as applicable to the facts stated by the Judge to the Jury, is to be cited to the Jury as matter of law; but the statement of facts, proved on that or any other trial, is not to be stated as matter of fact to the Jury, because the statement is in a speech in some way, and which is not matter of fact at all. If you had persons in Court to prove what was proved there, it would not be admissible evidence—it is calling in aid extraneous facts, which have nothing to do with the case; but stating the law of the Judge is competent to the Counsel, because it is the statement of a judicial opinion as applicable to the particular facts, as those facts appear in what the Judge stated. You might as well argue from the decision of a Jury in one case, in different facts, for a Jury deciding on another, which neither on one side or the other would be permitted; because, then, the counsel for the crown would have a right to cite cases of Juries deciding against the prisoner, as well as the prisoner having a right to cite others. As far as relates to your citing the judicial opinions of Judges delivered in any trials, it is competent; but I cannot think it is competent on either side to state the facts of that other trial. I do not know whether I make myself understood, but that seems to be the distinction.

Lord President.—It is difficult to say what fact was proved at any trial; it is impossible for any human being to tell. Lord George Gordon was acquitted, but on what part of the facts it is impossible to know.

Mr Murray.—I am much indebted to the Court, and bow entirely to the decision just delivered, which is just in every respect. I had no wish to state more of this trial than what might make the speech of the Judge intelligible on the occasion. It is shortly given, and I thought some kind of

introduction necessary to make it intelligible; but I will state no more of the facts. It is in page 644 of the last edition of the State Trials, Lord Mansfield says, "There are two kinds of levying war; one against the person of the King, to imprison, to dethrone, or to kill him, or to make him change measures, or to remove counsellors; the other, which is said to be levied against the majesty of the King, or, in other words, against him in his regal capacity; as when a multitude rise and assemble to attain by force and violence any object of a general public nature, that is levying war against the majesty of the King; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government, and by force of arms to restrain the King from reigning according to law." The other passage which I have marked, after referring to the law, is, "In the present case, it does not rest upon an implication, that they hoped, by opposition to a law, to get it repealed, but the prosecution proceeds upon the direct ground, that the object was, by force and violence to compel the legislature to repeal a law; and therefore, without any doubt, I tell you the joint opinion of us all, that if this multitude assembled with intent, by acts of force and violence, to compel the legislature to repeal a law, it is High Treason." That is the passage that I had marked. What I have said was meant to introduce it. So far from meaning to say, what was done on that occasion was not High Treason, it was my meaning to state to you, it was the opinion of the Judges on that occasion, delivering the law most soundly, that what was done on that occasion, if done with an intent to overawe the legislature, was High Treason.

There was another passage I had marked, where, on a subsequent trial, Lord Erskine says, that they all admitted, that if that intent was proved against Lord George Gordon, it was undoubtedly High Treason. That was the conclusion I wished to arrive at; and I trust that what I was aiming at was perfectly regular.

Gentlemen, I must ever conceive it part of my duty to state the law in the fullest manner, on every point. I

have brought it forward on every point, as laid down by Judges of the highest authority. I have not quoted one of doubtful reputation: The opinions of Lord Coke, Lord Hales, Mr Justice Foster, Lord Chief Justice Eyre, Lord Ellenborough, Lord Chief Justice Dallas, and, lastly, my Lord Mansfield, are those which I have brought before you, without attempting to get the law a little varied, by looking for authorities more favourable to the prisoner. I wish the law to be fully understood by you, that you may distinguish what it is your peculiar province to determine upon. I recollect that Lord Erskine says, they all admitted there could not be a doubt, that what was done on that occasion, if the intent could be proved, was High Treason. Lord George Gordon was tried for it, and the law is laid down as I have quoted it; and I trust I have stated its true import.

Lord Mansfield says, "that the Act of Parliament of Charles the Second is in full force; there is not the colour for a doubt, the Bill of Rights does not mean to meddle with it at all; it asserts the right of the subject to petition the king, and that there ought to be no commitments for such petitioning,—which alluded to the case of the Bishops, in King James's reign, who petitioned the King, and were committed for it; but neither the Bill of Rights, nor any other statute, repeals this act of Charles the Second; and Mr Justice Blackstone, in his Commentaries, treats of this act as in full force; and, as I have told you, we are all of that opinion; and consequently, the attending a petition to the House of Commons by more than ten persons is criminal and illegal." He says, "Having premised these several propositions and principles, the subject matter for your consideration naturally resolves itself into two points—First, Whether this multitude did assemble and commit acts of violence, with intent to terrify, and compel the legislature to repeal the act called Sir George Savile's? Did they assemble with that intent? If upon this point your opinion should be in the negative, that makes an end of the whole, and the prisoner ought to be acquitted; but if your opinion should be,

that the intent of this multitude, and the violence they committed, was to force a repeal, there arises a second point, Whether the prisoner at the bar incited, encouraged, promoted, or assisted in raising this insurrection, and the terror they carried with them, with the intent of forcing a repeal of this law." The first is, Whether the multitude assembled with the intent of terrifying the legislature? The law, as laid down, is undisputed—is clear, that if they did assemble on that occasion, with an intent of terrifying the legislature, and making them repeal the law, it was High Treason. The second point is, "Whether the prisoner at the bar incited, encouraged, promoted, or assisted, in raising this insurrection, and the terror they carried with them, with the intent of forcing a repeal of this law?"—that is put again separately, for them to consider, as in their province, whether the prisoner, Lord George Gordon, had that intention. His Counsel pleaded undoubtedly, such an intent would constitute Treason, but he had no such intention; but that was a matter for the Jury, whether the intent was so or not; and my Lord Mansfield declares, that was their peculiar province. He says, "Upon these two points, which you will call your attention to, depends the fate of this trial; for if either the multitude had no such intent—or supposing they had, if the prisoner was no cause, did not excite, and took no part in conducting, counselling, or fomenting the insurrection, the prisoner ought to be acquitted—and there is no pretence that he personally concurred in any act of violence." There is the matter left by that great Judge to the consideration of the Jury—admitted by his Counsel, as I have stated, that they did not pretend to raise a plea, that if the intent was such, there was Treason in those who assembled with that intent. It was left for the Jury to weigh the circumstances in their breasts, and take the whole into their consideration.

Lord Mansfield merely read over the evidence. "His Lordship now summed up the evidence verbatim to the Jury, in the course of which he told them, that he observed that most of them had taken very full notes; that he pur-

poorly avoided making any observations upon the evidence, choosing to leave it to themselves." He says, "This, Gentlemen, is the whole of the evidence on either side; you will weigh this evidence, and all the observations made at the bar, or which occur to yourselves upon it. I avoid making any. The points for you to determine are, Whether this multitude were assembled, and acted with an intent to force a repeal of this act, called Sir George Savile's Act? and if you think such was their intent—whether the share the prisoner had in getting together such a number of people to go down to the House of Commons, in meeting them in St George's Fields, in talking to them in the lobby, in wearing the cockade on Friday and Saturday, or in any other part of his conduct, had the same intent, by the terror of an outrageous multitude, and the violence they committed and threatened, to force a repeal of this act—if there was no such intention either in the mob or the prisoner, he ought to be acquitted; but if you think there was such an intent in the multitude, incited, promoted, or encouraged by the prisoner, then you ought to find him guilty. If the scale should hang doubtful, and you are not fully satisfied that he is guilty, you ought to lean on the favourable side, and acquit him."

I say, Gentlemen, here was the conduct of a Judge of the highest talents, of the greatest knowledge, of the greatest experience, and who himself had been the greatest sufferer by this insurrection. The transports of that mob had seized upon his house, and had destroyed the labours of his whole life—those writings by which he hoped his name would descend to posterity, which were the result of the legal knowledge and experience——

Lord Chief Baron Shepherd.—Now you are adverting to facts again; besides which, these facts took place several days after the whole transaction in which Lord George Gordon took any part.

Lord President.—Perhaps the most favourable thing for him was, that he was tried by Lord Mansfield, under the circumstances.

Mr Murray.—I beg leave merely to observe, that in the

trial of Hardy, Lord Erskine was allowed to make the same observations; and if I am guilty of any irregularity, I extremely regret it.

Lord Chief Baron Shepherd.—It is impossible for a Jury who are trying one cause, to be influenced by the decision of any Jury on any other facts of which this Jury can know nothing; and whether that was last year, or in Lord George Gordon's time, the allusion to the facts, any further than is absolutely necessary, is irregular.

Mr Murray.—Surely—I am aware that that is the case; and the only view with which I urge it, is to shew the question left to the Jury, and the necessity of the Jury keeping it in view. The question comes to be, First, Whether there is the existence of Treason, with what amounts to a treasonable intent. Secondly, Whether a particular individual is party to it, and can be convicted of it.

Therefore, Gentlemen, the first point that you have to consider is, Whether there was this intent on the part of those persons who were there; and of those persons who have disappeared, Stevenson and others, you are not to judge or prejudge them as individuals, but whether there is such evidence before you as shews a treasonable intent on their part. I say, there is no evidence to make out such intention—there is no such thing proved—there is not the number, the force, the design, the co-operation, or arrangement, to make it a conspiracy to effect High Treason. You have no evidence of that. I leave that point to you, whether, as fair and candid men, you have such a proof of a treasonable design, that you can magnify it to what alone would constitute the Treason of levying war against the Crown,—I ask you, whether there is the smallest evidence to support it as a general case? There is a riot, not marked by any circumstances of atrocity; and I see cases of riots, where persons have been in arms, and tried in that way. I do not know that I am permitted to quote them; but riots have been tried in recent times, where persons had pikes made, and seditious speeches, yet were tried for riot. I do not know whether it would be right to refer to those cases which took

What are the deductions? If a man is to go to Glasgow, he is to go to a provisional committee, the existence of which is not proved. There is not a proof of a correspondence with any body here, and yet this is supposed to be evidence of some correspondence. I believe no attempt was ever before made to draw such an inference. But what is the evidence on this point? This man thinks, or fancies he heard something of the kind; Rownie went out at eight in the morning; could he have gone thirty-two miles in the course of the night, and been there again soon in the morning? Would there have been no evidence of some kind to confirm it, if Rownie had gone? But Rownie has sworn he was not at Glasgow; the witness did not pretend to say he saw him set out, or had any reason to believe he had been there; and yet, from such circumstances, strained inferences are to be drawn, to make you believe that Wilson was a partaker of a plot, and a framer of it, when he was perfectly innocent, and was merely there by being forced; he was forced by fear and terror, to which he might be more subject than bolder men would be; but by that fear acting upon him, he was induced to go a few miles. He left the party with the same feelings of fear with which he had submitted to them, and acting and talking with that degree of equivocation and doubt which a man under the influence of fear is liable to do. There is the direct evidence of Rownie, that he had no conversation with him. That evidence—but I almost fear, in going into this point—and there is much other evidence of the same kind—that I am drawing your attention from the main feature of the case,—Whether there is any thing like Treason proved against this person, or any thing which, viewed with candour and impartiality, can give you the smallest ground for holding he had that wicked intent, to join in Treason, or that there was that Treason existing?

Gentlemen, it is now time that I should give place to the eloquent speech which, I have no doubt, you will hear on the other side of the bar, from a gentleman of great knowledge and experience, from another part of the kingdom, who

will address you on the part of the Crown. I have already stated, that if this had been a prosecution according to our forms, the prisoner's Counsel would have had the privilege of addressing you last, and of answering any of the charges—any of the numerous arguments—still more, of the bold and authoritative statements that may be made, to affect your judgment. We are deprived of that advantage, but I do not regret it. Great as I know that gentleman's ability to be, travelling on a road he has long travelled, in this respect let his arguments have every weight; but I must caution you against allowing mere assertion, unless there is an argument or an exposition of the case, which carries conviction to your minds. I know that every ability will be shewn on this occasion; and I am surely not inferring very unjustly, from what I have seen, that there is no point which will be given up, that can make any impression upon you. Beyond doubt, the argument will be pushed, as I have seen on other occasions, where the judgment of the Court has been in my favour. It will be put as quite clear—as a matter on which your minds must be made up. You will be told, that there was a great deal of Treason in the land—that there was a proclamation here—it was put up in Strathaven, and conversations took place, on account of which he imputes Treason to the prisoner; robberies took place for arms, and then there is open rebellion on the road between Strathaven and Kilbride; and under these circumstances, you are to ascribe to Wilson the treasonable intent imputed. But I say, take all the evidence—take the evidence of the Crown—take the evidence on the part of the prisoner, and view it on every side and direction, and it tends to the very same conclusion. You have such proof as, in the circumstances of the case, could be got of force and violence; there is proof that Wilson acted as a person under the influence of fear; and, according to the doctrine of Mr Justice Foster, a person, if he proves force or violence, is not obliged to account for every day, week, or month, he is acting under it. I do not ask that; but I am not obliged to account for every foot of the road. A person under the influence of fear only, shews it by his look and demeanour; but you cannot see him starting in every

instance, because, when he cannot safely resist, he acquiesces, becomes obedient, and his reluctance can only be seen by his manner and demeanour, acting under force, and against his inclination.

Gentlemen, with these considerations you have this case left in your hands. I expect every thing to be urged that can be stated by ability or experience, against the prisoner. In forming your verdict on that case, I would not wish for one moment to withdraw your consideration from the true merits of the case, by any motives of compassion of his situation, or that of his wife or family, whom I might have adduced as witnesses, or at least the daughter; but I thought it was too cruel a situation to place a daughter in, to call her to give evidence in a Court of Justice, where her father's life was concerned. I thought we had proved enough for his innocence; and that it would be an undue advantage, that even a Counsel is not entitled to take, to try to bias the upright and impartial tone of your minds, by any considerations of that sort. You are to judge without compassion—you are to judge uprightly according to the facts, according to the law—and you are to consider whether the malignant intent of treason is proved or not. Unless that is proved to the conviction of every one of you, that there was this treason existing; that there was this connexion between the proclamation at Glasgow, and these movements; that they were all in direct obedience to it, and a train of the same proceedings; that this prisoner was acting with these views, with that malignity, with that treasonable purpose, without any force operating against his mind; if indeed you believe all that, you must give a verdict of guilty against him. But is there any evidence of that kind? is there any thing that, judging as fair, upright, and impartial men, free from all prejudice—free from any thing that has happened any where else, and has not been given in evidence before you—that can entitle you to give a verdict of that kind against the prisoner? Compassion is not a consideration by which I will try to move you. You must act according to justice. The law is clear, that if you have a doubtif there can exist a shadow of doubt on the mind of any one of you—you cannot, as upright men, pronounce

a verdict against him. And doing that duty—doing it uprightly, as you must do, you will have the consolation of discharging one of the highest duties that can be exercised by any person, be his station what it may, in a great and free country.

It is observed by a great Judge, that the case of Treason which you may think the most remote, is one which concerns every individual. He says, "The learning touching these subjects," I refer to Judge Foster, "is a matter of great and universal concernment. It merits, for reasons too obvious to be enlarged upon, the attention of every living being; for no rank, no elevation of life, and, let me add, no conduct, how circumspect soever, ought to tempt a reasonable man to conclude, that these inquiries do not possibly concern him individually." These were the opinions of a great Judge, publishing his treatise on Criminal Law—"that no man ought to conclude that these inquiries do not possibly concern him individually:" no person can say so; none in this Court—none of those individuals whom I address, can say it may not be his own case, in some of the various revolutions which the vicissitudes of life produce. But, Gentlemen, if that should ever be your case, would you have upon your minds the sting to reflect, that upon the mere publication of this proclamation—that upon the mere evidence that it has been put up in the village, and pulled down,—no evidence that the prisoner had seen it,—that upon these presumptions, you gave a different aspect to the proceedings, and pronounced a verdict against the prisoner; none of your lives or fortunes will be safe, if that shall be the case.

I have already said, that I do not wish to withdraw you from your duty on this occasion. Be the result what it may, you are to do your duty, even if you were to suppose you would suffer in reputation by the verdict. You are to give it fearlessly and honestly. If there is a higher reputation than another, it is that of a judge, or a juryman, discharging his duty correctly, and inclining the scale no way but according to the rule of law. The rule in criminal cases is clear; there must be evidence—there must be manifest and direct proof of the guilt; and

unless that is proved to the mind of every one of you, you cannot return a verdict of guilty against a prisoner. In cases of civil matters, the rule is different; it must be decided one way or the other; the estate must belong to A or B; and though the case is doubtful, it is only a balancing of reasons, and if it preponderates in favour of one, then the verdict is given. But criminal justice rests on a totally different footing; it rests on example. That punishment must be injurious, which is not given on the clearest and soundest grounds. So far from supporting the cause of peace, good order, and the constitution, a verdict, attended with the smallest doubt or difficulty, tends to impeach the respect due to the law and the crown, and every other object justice may attain.

Gentlemen, there is one rule which alone, I am convinced, will direct the verdict you will return—what you think right in your own minds, and in your own consciences. If there is that pregnant evidence of guilt which constitutes the most heinous of all offences, brought home to the conviction of all of you, that must be the ground of your decision. If there is a doubt, there is no ground for that verdict. It is not mercy to the prisoner to give a verdict of acquittal; but you are guilty of perjury, if you do it against your conviction. And in giving that verdict from pure motives, you will stand superior to all considerations which can weigh in the mind of man, compared with the real dignity you will all derive from your upright conduct. All the advantages and honours to be held out to an individual, are not to be placed for a moment in competition with this, which must in the end be acknowledged by those who are most zealous in the pursuit of their own advancement. There must be one period, when they will prize a just, upright, firm conduct, beyond all the advantages which favour, fortune, or emoluments can hold out, or even the estimation of their fellow-citizens. The Poet of Nature, in describing the end of an aspiring man—in describing the fall of Wolsey when he relinquishes his ambition, shews what are the feelings which come at last to fill the mind of every man, and to afford the only true resource, after he has relinquished every prospect of earthly advancement. Deprived of his favour at court, he

is told another person had been elevated to his place—that a most just and virtuous man, Sir Thomas More, had obtained the favour of the Sovereign, and been chosen Chancellor in his stead. The last pang of expiring ambition makes him resume his former feelings; but he looks to his real situation, and to those virtues, the recollection of which he wished he could carry with him in his downfall, as he had not sufficiently regarded them in his elevation. He says—

"That's somewhat sudden."——

Recollecting his own situation, he adds—

"May he continue
Long in his Highness' favour, and do justice
For truth's sake and his conscience; that his bones,
When he has run his course, and sleeps in blessings,
May have a tomb of orphans' tears wept on them!"

That is a tomb to a just man more glorious, more desirable, than all that the labour of the sculptor can raise, or that the flattery of the poet can accomplish, to do honour to the dead. —But neither this honour, nor any earthly advantage, can weigh in your minds, compared with that more solemn scene, which you must meet—which we all must meet, when the cloud and mist, which surrounds the man in every situation, will be removed. The time must come, when that inevitable hour of change will be as near to all of you, as the most unfavourable verdict will place it to the unhappy man at the bar. We must all approach that period, when there will be no consolation but that of the recollection of the past events of our life, of the duties we have performed, and of the consciousness of having done right, that we can carry with us. When that moment arrives, I trust, Gentlemen, you will be able to look back, with the highest satisfaction the human mind can have, on the discharge of your duty this day, and feel that you pronounced a pure and upright verdict in a state prosecution, without fear or favour.

Lord President.—James Wilson, do you wish to make any observations to the Jury yourself?

Prisoner.—No, my Lord.

REPLY.

Mr Serjeant Hullock.

May it please your Lordship,
Gentlemen of the Jury,

It now becomes my duty to address you, in support of the case which has been laid before you on the part of the Crown; and to reply to the observations which have been made, at so much length, on the part of the prisoner; and to endeavour to recall to your attention, a recollection of the facts of this case, and the law applicable to those facts, and of the real question which you have to try.

Gentlemen, it is long, long ago, since the learned Counsel took leave of these considerations; because I think, out of the countless hours during which he has addressed to you his two speeches, a very moderate portion of these speeches have been addressed to the real questions between us.

Gentlemen, if I were to pursue my own feelings upon the present occasion—(it is most probable I may take an erroneous view of the question)—but if I were to pursue the dictates of my own mind on the present occasion, I should abstain altogether from addressing you at this period of the cause; because, in my humble judgment, so little argument, (or really no argument at all, as applicable to the facts,) has been addressed to you, and so little attention has been paid to the law on the subject, that I think I should be guilty of no dereliction of duty, if I left the case where it stands. But lest it should be considered, that where much has been said, something has been proved, I trust I shall experience your indulgence for a short period, while I endeavour to draw your attention to the case, and give such answer as occurs to me, to the parts of the address which has been made, on which I can bring my mind to bear.

Gentlemen, it is no part of the duty of a prosecuting Counsel—it is no part of the object of myself and those who are concerned with me, to endeavour to get a verdict by topics

calculated to inflame your feelings or passions; and if I possessed those talents which have been ascribed to me, that eloquence would be improperly applied on this occasion. I seek your verdict on the facts, on that oath which you have taken to administer justice according to those facts. I seek it not upon my bare and unauthoritative assertion. I am not authorised or qualified to make any; but I seek your verdict upon the evidence, and upon the law applicable to it; and unless I have deceived myself—(it is probable I may have done so)—but unless I have, I think I shall satisfy your understandings, if they are disposed to reasoning, that there never was a case of High Treason tried, if that which is now presented to your notice is not one of that description.

Gentlemen, the learned Counsel introduced himself to your notice last night, by apologising for the shortness of the time he had had to bestow on this subject. I think, from the countless hours he has bestowed on it, he need not have made an apology of that sort; because he has introduced every thing that can be found in the books, except the law immediately applicable to the subject. He began with a case in the year 1403; he produced cases which happened, before the Union, between this and the neighbouring country; he produced cases which had no bearing on the present; and he studied, from one end of his address to the other, till within the last five or six minutes before he sat down, not to submit to you at all, the only real question you have to try upon the present occasion.

Gentlemen, it is not my inclination, because I feel it is irrelevant to the present discussion, to enter into any discussion with respect to the advantages the law of this country may possess over the law of England; but if the law of Scotland is to have a preference, or be entitled to a precedence, over the law of England, it must be on the ground of different arguments than those I have heard to day.

The learned Gentleman thought proper to address some observations with respect to the length of the indictment upon this occasion; and I do feel myself called upon to make a few observations in reply to that part of his statement. He dwelt at some length upon an expression which

dropped by accident from my honourable friend near me: he thought that the word had been improperly used, which was applied upon that occasion to the mode in which the reading of the indictment had been enforced; namely, a considerable length. It was said to be unwarrantable, it had not been adopted on former occasions, and might have been spared. That word, I think, Gentlemen, you will recollect, afforded materials for addressing you for about an hour; but whether that word was improperly or properly applied, I take leave now deliberately to say, that the observations applied to this indictment were unwarrantably applied, and proceeded altogether, not upon a misunderstanding of the subject, because I am bound to suppose that the learned Counsel understands the law which he is discussing; but I do say, if the Counsel knew what he was about, those observations were altogether unwarranted, improper, and misapplied.

The learned counsel took on him to aver there were fifty-seven counts in this indictment. Gentlemen, I am sorry to address you upon topics, which to most of you must be altogether new and unknown; but, Gentlemen, the indictment upon this occasion was stated, I think, to contain an ocean of parchment, through which the learned Counsel said he should be obliged to travel; but through which it would have been more appropriate to say he was obliged to sail: and the learned Counsel said that he found nineteen counts, and then he multiplied them somehow, and found the result was, according to Cocker, fifty-seven. Now, will you believe that this indictment only contains four counts? There are two charges founded on the statute of the 25th of Edward III. to which I shall by and by call your attention; and two Treasons founded on an act passed in the reign of his late most gracious Majesty, in the 36th year of his reign. The two first charges in this indictment are founded upon the first statute; the two last, on the last act; and yet the learned Counsel challenged me to point out a record of similar dimensions. Gentlemen, there was a case recently tried, in which the counsel for the Crown were as much distinguished by their talents, by their learning, by their liberality, and by every thing in point of fact which constitutes a

right and claim to the gratitude and indulgence of the public,—counsel of whom I should in any other place say much more; but on that occasion, in the trial of Watson, in the year 1817, the indictment, framed under the auspices and the talents and learning to which I have alluded, contained the same number of charges,—the same species and description of charges. The last indictment tried in London, with which you must be all acquainted, namely, the plot distinguished by the name of the Cato-Street plot, contained three charges; the first was omitted, which appears on this indictment; but I venture to aver, that since the 66th of the King, no lawyer who ever was conversant with framing pleadings of this sort, would ever think of confining the indictment, or making it shorter than this.

But, Gentlemen, the objection is, that the prisoner is puzzled by it. No such thing; these counts, as they have been improperly called, and which are denominated overt acts,—what are they? The object is to apprise the party at the bar of the nature and description of the evidence to be laid before the Jury;—the object so far from being to perplex, is to render the matter clear and plain—to enable the party to come with his evidence prepared to combat those things given in evidence. If the prosecutor should, by accident, after the indictment is found, discover any other description of overt act in which the prisoner is implicated, he is precluded by the law from laying that in evidence before the Jury, if it is not stated as an overt act;—then, I beseech you, say whether an indictment framed on these principles, and with that view, is entitled to the imputation cast upon it. Supposing, upon the present occasion, I should be in a condition to prove as clear as the sun at noon-day, that that man, that unfortunate, miserable individual now at the bar, had been connected in a treasonable correspondence, with a view (to use the illustration of the learned Counsel) to take Dumbarton Castle, or Stirling Castle, or any place in this country, I should be excluded from offering it in evidence before you, because there is no overt art, no part of the record adapted to a fact of that description.

Then it is said, you put so many in here.—Which have been proved? I will shew you, by and by, which have been

person of our sovereign lord the King, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm," (by that is not meant an actual deposition of the King, but the undertaking any measure which shall be in derogation of the royal authority, in derogation of the law and the authority of the Crown, as the executive power, or part of the government of the country,) "or to levy war against his Majesty," (this is the part of the Act on which the count is framed,) "his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both Houses, or either House of Parliament, or to move or stir any foreigner or stranger, with force to invade this realm; and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed." Therefore, you see there, if a man do intend, in the language of the Act of Parliament, to levy war against his Majesty, and shall establish that intention by an overt act, although there shall not be a levying of war, (and in this the Act makes a difference from the former Act,) in that case, the party is brought within this statute.

Now, Gentlemen, the first case to which I shall beg to draw your attention—for in consequence of the challenge repeated late last night and early this morning, I shall not dwell on the facts proved on other occasions—you are to decide this case by the facts before you:—You are, in point of fact, to see first what the law is, and, in the next place, what are the facts given in evidence before you—your office being to find a verdict according to the evidence, whether those facts bring the prisoner within the scope and operation of the law. Gentlemen, Mr Justice Foster has been already cited; and being the earliest, (I was going to say living authority,) but the earliest modern authority, his book is the text on the subject. The language of Mr Justice Foster has been repeated almost verbatim in modern times; and you will agree with me it is hardly worth our while to seek for authorities

four hundred years ago, as it is not very likely we should know what took place then, except from a very imperfect memorial of the facts incident to those cases. In Mr Justice Foster's book, page 211, he lays it down thus: "Insurrections for redressing national grievances; or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the King; or for the reformation of real or imaginary evils, of a public nature, and in which the insurgents have no special interest;" because, if they have a particular interest—if the object be to revenge any private grudge, or to accomplish any private or special object; such as that case, which is an illustration, and which shews the palpable and broad distinction between Treason and other cases, namely Porteous's case—I say, where the object is of a particular and special nature, it is not High Treason, whatever offence it may be. He says, "Risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war; for they are levelled at the King's crown and royal dignity. But," he says, "every insurrection which, in judgment of law, is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him—these risings all amount to levying war within the statute, whether attended"—and here, Gentlemen, is another observation it is necessary to call your attention to, and to which you will have the goodness to attend—"whether attended with the pomp and circumstances of open war or not; and every conspiracy to levy war for these purposes, though not Treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death. For these purposes cannot be effected by numbers and open force, without manifest danger to his person." However, that is unnecessary for me to call your attention to in this case.—And he says, Gentlemen, that "the true criterion"—and it is admitted to be so, and if I do not shew the intent of these parties to be that which he states, I do nothing at all—he says, "the true criterion, therefore, in all these cases, is *quo animo* did the persons assemble?"—with what mind,

with what intention, for what purpose, did the party assemble on the occasion?—" for, if the assembly be on account of some private quarrel, or to take revenge on particular persons, the statute of Treasons hath already determined that point in favour of the subject." Now, Gentlemen, in a different way, but certainly in a way more satisfactory, because more explanatory, Treason has been laid down by different Judges from that time down to the very moment almost that I am addressing you.

Gentlemen, the next authority to which I shall call your attention, is the authority of a living Judge, concerning whose learning, talent, and experience, it is unnecessary for me to say any thing. That learned Judge, Mr Justice Bayley, who charged the Grand Jury in the case of Watson and Thistlewood, in 1817, in which it was his duty to lay down the law on this subject, thus states it, in a manner as clear and precise as the English language would enable him to do, and his exposition has been considered almost as a text upon this subject from that time down to the present. He says, " It is not absolutely necessary, to constitute the offence of levying war, that there should be a regular organized force, or that the persons should be in military array. If there is an insurrection, that is, a large rising of the people, in order, by force and violence, to accomplish or avenge—not any private objects of their own, not any private quarrels of their own—but to effectuate any general public purpose, that is considered by the law as a levying of war. There must be an insurrection; force must accompany that insurrection: and it must be for an object of a general nature; but if all these circumstances concur, that is quite sufficient to constitute the offence of levying war." He says, in a subsequent part of his address to the Grand Jury, and which I beg leave to address to you, Gentlemen, " If, therefore, in that which shall come before you, you shall find that there was a rising —a rising accompanied with circumstances of force; and you shall be satisfied that the persons who so rose, or any of them, had it in their objeet to effect, by force and violence, any general reform of any description whatever, or that they had any other general public purpose, it will amount to the of-

fence of levying war." "Another of the charges," he says, in that indictment, which was the same as this indictment,—"another of the charges is a conspiracy to levy war, with a view to force the Crown to alter its measures or its counsels." That is the last charge in this indictment—it was the last charge in Watson's indictment. He says, "That suppose that there has not been such an insurrection, with such force and violence as amounts to the actual levying of war; but merely suppose that certain persons have met together, and that the result of their deliberation and determination has been their endeavour to effectuate such a rising, and to effectuate that rising for the purpose which the bill will charge, namely, the offence of compelling his Majesty, by force, to change his measures and his counsels."

Gentlemen, the next case to which I beg leave to call your attention, is a case also still later than that, in which the law was laid down by the present Lord Chief Baron Richards, and which is to be found in the 1st volume of the King *v.* Brandreth, 273. Gentlemen, after adverting to the two statutes, namely, the statute of Edward III. and the statute of the 36th of the late King, he lays down the law thus; and here, Gentlemen, I hope I may, without any irregularity, answer the call and the challenge made last night, loud enough to be heard, but repeated to-day. The learned Counsel called on me, or any man concerned in the cause, to point out to your attention, to bring before the Court, any case analogous in circumstances, similar in facts, to that which constitutes the ground of your present deliberations. Gentlemen, the case which I hold in my hand, was in all its parts, in all its circumstances, precisely of the same nature, quality, and description, as that which is now in evidence before you. —What were the facts in Brandreth's case?—what were the circumstances that brought that man to that unfortunate and disgraceful end which attended the result of that trial? —They were the facts of a single morning and night—facts of going from house to house, and forcing people to join them; securing arms wherever they found them; and under a declared purpose of marching to join insurgents, at that time either rising, or about to rise, at Nottingham Fo-

rest. What was the object of these persons marching from Strathaven?—what was the avowed, declared, and notorious object of that operation? Was it not, in point of fact, in consequence of a pressing invitation, or of an invitation which they received the preceding night, intimating to them that the Reformers at Glasgow were in arms, expecting their brethren at Strathaven to join them; and, in fact, the message was so prompt, and requiring so speedy an answer, that they had no time to get more regularly armed, than by going round and getting armed in the manner which constituted the events of the 5th of April. Leaving that for the moment, I beg to call your attention to the language of the Lord Chief Baron, in laying down the law in that case. He says, after saying there must be an insurrection, that force must accompany that insurrection; and that it must be for a general object: "But if all those circumstances concur, insurrective force attending it, and the object of a general nature, that is quite sufficient to constitute the offence of levying war." He says, "It must be a public object; therefore tumults that have a private object, in which the parties have private individual interests, are distinguish. They are distinguished, indeed, by the statute itself, from attacks on the regular authority of the realm. If, therefore, it should appear, as indeed has been contended, that the insurrection or tumult under consideration, was only the effect of a prevailing spirit of tumult, violence, or disorder, directed to any private object, or any thing but an attack aimed at the royal authority of the realm, that would not be Treason; and no person who administers the law will ever, I trust, attempt to confound tumults of the sort I have mentioned with Treason, which is an attempt to overturn the established government of the country." Then he puts this instance:—"In order to put a plain case, which is a very clear one, and in putting which I am using the words of a very great Judge, if a body of men assemble together, and with force destroy a particular inclosure for instance, that is not an attack of a general nature—it is a high misdemeanour, but not Treason. But if they assemble with force to put an end to all inclosures," which has been thought to-day a very curious case,

but the law of which has not been denied, "that is of a general and public nature, and it constitutes Treason. If there should unfortunately be an assemblage of men with force to destroy a chapel or other obnoxious building, that, being confined to a particular object, would not be Treason." That was Porteous's case; the object was to hang that individual; he had incurred the public odium for some event that had taken place; their fury was directed against him, and him alone; they assembled to break open the tolbooth; they accomplished their purpose, and the man was hung on the spot. What did they do then? They separated, and there was an end of it. Will any lawyer affect to say, that any doubt could be entertained upon a case circumstanced like that?—Where is the man that will stand up here, or anywhere else, and say that for a moment he can doubt or pause over the nature or quality of such an offence as that? It had nothing to do with Treason; it was a violent outrage of a nature and description very different from that which forms now the subject of your deliberations. But the learned Judge goes on: "If the same power was applied to destroy all chapels, or all offensive buildings, that has been held clearly to be High Treason." If the same object had been, as to Porteous, to destroy all prisons and all tolbooths, that would be High Treason—why?—because there the object was general; it was to do that, in point of fact, which could not be done, without infringing upon the royal authority and power, and, in the other case, it was merely a private purpose, as far as it went, and one insulated and particular act, and nothing general.

Gentlemen, I rather, certainly, upon the present occasion, am willing to risk the imputation of tediousness in my quotations than the imputation of inaccuracy. I do not wish to use language of my own, more especially when I can get from every book language much better, and the language of authority and of the law, upon the present occasion. I will now refer to the language of the other learned Judges, which occurred in the course of the same trials; for, you remember, at Derby there were three or four persons tried, and those persons were tried first by one Judge, and then by an-

other in order; and the one to which I now refer was a trial before the present most eloquent and learned Chief Justice of the Court of Common Pleas, I mean Chief Justice Dallas, and see how he puts the case. This is in the second volume of the trials called Brandreth's Trials, pages 68 and 69. After having summed up the evidence, he says,—"I shall now beg leave to call once more your attention to what the law is, and, having briefly stated it in the outset, I will only again say, there is no legal doubt or difficulty belonging to this part of the case. The Learned Judges with whom I act upon this occasion being of opinion with all their predecessors, whose doctrine and decisions have been referred to, that if there be an insurrection, by which is meant a large rising of the people, in order, by force and violence, to accomplish and avenge, not any private objects of their own, not any private quarrels of their own, but to effectuate any general purpose, that is considered by the law as a levying of war." That is the precise language of Justice Bayley, afterwards adopted and pursued by the Lord Chief Baron. "And this," he says, "you may take to be clearly the law of the land, nor is it the law of the land as depending upon the authority of any single Judge, it pervades every page of the criminal law of England as applicable to the case of High Treason. It may be traced back to antiquity more or less remote, has been delivered down, and is acted upon at the present day; but, drawn as much into controversy as it has been on this occasion, I think it necessary, not in my own words, for I will not trust myself to any looseness of expression when a rule of law is to be given affecting the life of man, but once more I will state, and more at length, the law as delivered by the greatest authorities." Then, Gentlemen, he goes on to state the authority, which I took the liberty of reading in the outset from Mr Justice Foster; then he reads another passage from Sir Matthew Hales, who has been adverted to in the course of the argument on the other side. He says, "That great and venerable Judge, as eminent in his public as he was estimable in his private character, Sir Matthew Hales, as on this day the subject, and so justly, of brilliant pane-

gyric by the counsel for the prisoner, who has laboured so much to draw this doctrine into destruction, lays down the law in different terms, but to the same effect. He says, if divers persons levy a force or multitude of men to pull down a particular inclosure, this is not a levying of war within the statute, but a great riot; but if they levy war to pull down all inclosures, speaking of a general intention, or to expulse strangers, or to remove counsellors, or against any statute, as, namely, the statute of labourers, or for enhancing salaries and wages, this is a levying war against the King; and why? because it is generally against the King's laws, and the offenders take upon them the reformation which subjects by gathering power ought not to do." Then Mr Justice Dallas thus proceeds:—"And therefore, Gentlemen," he says, "the question for you will be, whether this be or be not an attempt to make a change in the government by the gathering of power, either with or without arms, which Lord Hales says, which Mr Justice Foster repeats, and which all Judges agree with them in stating, is a levying of war against the King in his realm."

Gentlemen, before I quit this part of the subject, I shall venture to cite to you another authority, which, though last, is not least. I venture to cite an authority as to the law, as it will, in all probability, be laid down to you to-day; I venture to cite the authority of the learned Judge who presides here to-day. It is your duty, by your oath, to find your verdict upon the facts, and it is his bounden duty, by his oath, to declare the law to you; and I the rather refer to it, because it is an answer to parts of the address made to you, in which my Learned Friend certainly did here and there appear as if he meant to make something of the point that these men were few in number; that they were a set of men, fifteen, thirteen, twelve, and ten; and that, from their means and powers, they were little competent to complete that great change in the government which is imputed by this indictment. Gentlemen, you will find that the number and mode in which they are armed, or whether armed or not, forms no part of the ingredients in the case. If these men had proceeded from the place as naked as they were born, provided the intention was that imputed to them by this indict-

ment, provided the intention was to subvert the government, provided it was to do something in opposition to the government of the county of a general nature—no matter whether they were armed, whether they had the lock step, whether they had pikes or guns, or not—that has nothing to do with the question;—the question is, had they, or had they not, the intention imputed to them? * "Gentlemen, however ill-arranged, however ill-disciplined or armed the people may be, there is no doubt that every rising or insurrection, for the purpose of effecting, by force and numbers, any innovation of a public nature, or to redress any public grievance, real or imaginary, things which can only be lawfully and constitutionally accomplished by the King's authority or that of Parliament, is Treason, as an actual levying of war; and consequently to compass or imagine such a rising or insurrection, for such purposes, will be to compass and imagine the levying of war against the King under the late statute." So say I. I say it is as clear as the sun, that a compassing to levy war, under the circumstances stated in this case, is a substantive Treason under the late statute. Then, Gentlemen, let us go a little further:—"And therefore, Gentlemen, wherever the rising or insurrection has for its object a general purpose, not confined to the peculiar views and interests of the persons concerned in it, but common to the whole community, and striking directly against the King's authority or that of Parliament, then it assumes the character of Treason. For example, if mobs were to rise in different parts of the country to throw open all inclosures, and to resist the execution of the law regarding inclosures, wheresoever attempted; to pull down all prisons or courts of justice; to resist all revenue officers in the collecting of all or any of the taxes; in short, all risings to accomplish a general purpose, or to hinder a general measure, which by law can only be authorized or prohibited by authority of the King in Parliament, amount to levying of war against the King, and have always been tried and punished as Treason. It is, therefore, not the numbers concerned"—who ever thought that it was? does the Learned Counsel find it

* Charge by the Lord President to the Grand Jury.

in any book, and he seems to have read a great many upon the present occasion? can he cite a single authority? can he cite a single dictum—a single allegation from a lawyer at the bar, or a judge on the bench? can he produce a single authority where it is laid down that numbers are material? What are the numbers necessary to constitute treason, if ten is not sufficient? will twenty do? will thirty do? What is a treasonable number? What is the number of pikes, or the number of guns, or the number of something or other, that shall be sufficient, in the estimate of the Learned Counsel? In one case we may say, "Now here you have a party quite sufficient; here are five hundred men,—this has something of the nature and quality of the offence; but do not tell me of fifteen naked, half-starved persons marching out of Strathaven, in daylight, and with a flag—'Scotland free or a desart.'" Not meaning to enter into any discussion as to the meaning of that—but if there are fifteen ragged, miserable, half-starved individuals, marching out with a flag with such a motto to which I have alluded, is there any authority or law book that states, that because there were only fifteen, or because they were weavers, or this or that, that that therefore is less than Treason, if the intention was of a treasonable nature? I say no such thing is to be found. What does the law say here? "It is, therefore, not the numbers concerned, nor the force employed by the people rising in arms, but the object which they have in view, that determines the character of the crime, and will make it either riot or treason, according as that object is of a public and general or private and local nature."

Gentlemen, these are the authorities to which I have ventured to call your attention; but before I quit this part of the subject, allow me to advert to the different authorities cited on the other side. The first cases which were cited were out of Lord Coke and Lord Hales, as far as I recollect them; it was rather late certainly, but I did hear them. Those passages were all rather eulogies on the law, and containing a species of denunciation against any man who alters it. We do not stand here to question the law, but to enforce it, and therefore with those authorities we have nothing to

do. The next case cited last night was a case out of Gil Blas. What that case had to do with this I do not know; but so it was:—it was cited at considerable length, and, as you will not have forgotten it, I shall not repeat it.

The Learned Gentleman quoted the law, then, and my misfortune has been that he has not put his law all together, but he has sprinkled it over an immense surface, and you have to go from place to place to pick up his cases. The first case cited to-day was the case of the destruction of all inclosures. The Learned Counsel did not deny that that was law—he said it was a strange case. It is not less the law because a gentleman says it is a strange case. The next case was the destruction of all brothels. The same principle applies to that. If a party got up in this town, and set out on an expedition to destroy all bawdy-houses in the place, that would be High Treason—nobody can doubt it.

The next case was that of Purchase and Damaree, which was the case to which I alluded last, except for brothels read meeting-houses. The question there was not about its being treason or not treason; but the question was, whether one of these men, joining the rioters at the time they were actually engaged in this operation—whether, coming *in flagranti delicto*—whether he, on taking a part, by addressing one of the Guards, and saying, "Here let him come on, I will fight the best of them,"—whether he, not having joined the party till that late hour, the private acts of the other traitors could be brought in evidence against him?—There was a difference of opinion among the Judges on that occasion; but the great majority of the Judges were of opinion, upon principles which are uniformly acted on on the present occasion, namely, that if you shew two men acting to obtain one object and purpose, the acts of one of those persons, and the declarations of one of those persons, whether present with or absent from the other, are evidence of High Treason against the other, otherwise no High Treason could be proved against him; and I shall, by and by, have more reason to call your attention to the operation of that principle of law, because it mainly applies upon the present occasion.

I think the next case was a trial of some gentleman in this country, Stirling of Kier. I do not know, except it be to shew that which nobody can doubt—the Learned Gentleman's learning, and investigation, and knowledge, what that trial can have to do with the present. In the first place, it took place before the Union. What the facts of that case were, I do not know. I am willing to believe the men were men of family, of high spirit and gallantry, and were better objects, better specimens of traitors, than that exhibited before you to-day; but the sample is nothing; the question is, is this a question of Treason, or not?

The next case alluded to was a case which I shall say no more about, except that it was alluded to—the case of the Earl of Northumberland, in 1403. Whether the father attempted to support his son in the rebellion raised by him against Henry IV. or not, is to me perfectly immaterial, and is just as immaterial to any of you. If it is an amusing part of history, it may be read at another time, but it is of no use on the present occasion.

The next case is that of Lord George Gordon. There the law was laid down precisely as I have ventured to bring it to your attention to-day—it was laid down precisely in that case as it has been laid down ever since, and the facts of that case cannot therefore,—ought not to be, in fact, produced to your consideration; because, as all of you well know, you cannot take into consideration a trial at another place, and say the Jury found that man was guilty or acquitted him of the charge on such and such facts—that would be a departure from your oath—not only a total forgetfulness of your oath, but a direct violation of the solemn sanction under which you act to-day. You are not to found your verdict on the evidence in any other trial than that now going on—the evidence in this case, and that alone, is to form the basis of your verdict.

Gentlemen, if, therefore, I have rendered myself intelligible, and I seek for nothing more, I have no purpose to serve but that of bringing fairly and honourably before the jury the facts and circumstances of the case. If the nature and quality of those circumstances are but riots, if they are,

in point of fact, of a more lenient quality, of a slighter denomination, than that imputed to this man, I am sure that you, Gentlemen of knowledge and understanding, and men also having a stake in this country, and which stake must either stand or fall, which must be worth preserving, or cannot stand at all, if these scenes are to go on with impunity; but if they have not advanced so far, if they have not assumed that great, and heinous, and mischievous nature and quality of High Treason, you will feel it to be your bounden duty to acquit the defendant.

The question, then, for your inquiry will be, Has there, or has there not, been an insurrection? If there was an insurrection, were the parties concerned in it guilty of High Treason? If any parties were concerned in it, was the prisoner one?—that is the question. Now, if you please, Gentlemen, we will go by steps. Let us for one moment consider the facts of this case.—It appears in evidence, that on Sunday morning, the 2d of April, a proclamation appeared upon the walls of the town of Glasgow, in which I have now the honour of addressing you—that it was posted up in various public places—that it had not appeared antecedently to that day; it is therefore probable—it is not certainly in evidence, but it is likely—that it was put up in the night between Saturday and Sunday. It seems that, in Bridge-Town, proclamations of this sort, to the number of a hundred, were posted up; it appears also in evidence, that anterior to the appearance of that proclamation, this place was apparently in a state of tranquillity and quiet. It appears, that on the Monday, Tuesday, and Wednesday, the place had assumed a different aspect—men who were labouring for their families and themselves the preceding week, were no longer at work; they had quitted work, and were seen wandering about the streets in small and large parties—seen marching in numbers, and in military step. In point of fact, the town wore the appearance of confusion, and turbulence, and trouble; the magistrates were under the necessity of exercising the best judgment they could on the occasion, not only of increasing the civil police of the place and of the county, but also of drawing nearer the

town large portions of military force. These circumstances were known and were notorious in the town of Glasgow. Strathaven is sixteen miles from Glasgow. It is said, why, the Address was not long posted up there. If it was up there for a day or an hour, I care not. It matters not, in my view of the case, whether it was at Strathaven or not—it matters not in this case, when the facts are properly attended to and considered, whether there was one, or two, or no Addresses up at Strathaven; because I think I can shew you demonstrably in point of fact, if it is not at present as clear as the sun at this moment, that it was the appearance of the Address in this town that produced the rising at Strathaven; and yet we are told, gravely too, as if the Counsel thought it proper to put the observation, and thought it had weight—we are told that what was doing at Glasgow had as little to do with the people of Strathaven, as what was doing at Edinburgh. Was it so?—Is that an observation fit to be made in this case?—Can that observation be made, expecting you should give any credit to it, or that any man of reflection and understanding can rely a moment on it? Remember the message received at Strathaven—remember this man asked one of the witnesses, (and you know the tone and temper of the last witness we called,)—he asked, had he heard the great news?—the people were up, and they expected their brethren at Strathaven to join them. I pray you, what were they up for?—for what purpose were their brethren at Strathaven to join them?—for what purpose is not ventured to be suggested. In the countless hours during which you have heard the Learned Gentleman on the other side, he has not suggested a reason, except—how do we know they were not marching out to assist the Crown, to assist the King? What! are we reduced to these extremities, that we are to call in aid fifteen men—or you, men who live in Glasgow, are you in fact reduced to that miserable situation, so helpless in fact, so nerveless, so destitute of arms and of every thing to equip you, that they must come with their new-pointed sword, ten guns, and five pikes, to assist their brethren at Glasgow on behalf of the government? That, perhaps, was not seriously urged; but recollect it is the only

purpose which has been suggested to you—it is the only purpose guessed at—it is the only purpose my Learned Friend can propound to you, and certainly he had the merit of propounding it with all due gravity.

Now, Gentlemen, I pray you ask yourselves, ask your minds,—I ask you as men of understanding, and by your verdict give me the answer,—I ask you whether any man living can doubt that the object of that marching out on the morning, about which so much attention has been employed, was not, in point of fact, to assist the views of those absurd, and desperate, and treasonable men, then employed in turbulence and trouble in this place? See what the object of this was, and by and by I shall call to your attention an observation as to this Address at Strathaven. I care not whether it was up there or not, but I pledge myself to shew it was known, because their acts were founded upon it. Will you believe that that hawker who came twice a-week, and who says that then he had not been here for ten days, had never seen the Address? But he admitted that the men did not work after the Address appeared, though he was quite sure he heard some of the looms going at some of the shops. Is it not as clear as the sun, that the poor operative workmen at Strathaven abandoned their work? If I overstate it, you will correct me; but I appeal to the evidence in the cause, that, more or less, the effect of that Address was, to produce an alteration in the conduct of the men at Strathaven. Then, does it matter whether it was on the walls of Strathaven, or does it matter whether it was derived through the messenger from Glasgow, Mr Torrence? But can you believe that the particulars of that Address were not as well known at Strathaven as they were by every man almost in Glasgow?

But let us see, from the Address, what the object of these men was;—because I submit to you that the object of the men in marching out that day was, in point of fact, to sustain the men at Glasgow, and that the object of the men at Glasgow is to be derived from the language of this Address. Now let us see what this Address is,—it is an "Address to the Inhabitants of Great Britain and Ireland.—Friends and Coun-

trymen,—Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress,"—to do what?—" to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have reduced us"—to do what?—to leave work, or refuse to work till our wages are raised, or till we obtain a particular object, of a private nature?—" have reduced us to take up arms for the redress of our common grievances;—the numerous public meetings held throughout the country has demonstrated to you that the interests of all classes are the same." Is that, Gentlemen, then, an intention to accomplish, or to try to accomplish, (thank God, I trust they never will or can accomplish it,) an attempt to accomplish a general purpose,—" to take up arms for the redress of our common grievances—the numerous public meetings held throughout the country has demonstrated to you that the interests of all classes are the same." I think it is not necessary to address any observations to you on that part of this paper. Gentlemen, they go on, and then it comes here in one part of it to say,—" Liberty or death is our motto; and we have sworn to return home in triumph, or return no more!" You remember what was said by one of the persons at whose house a gun was got—" If we succeed, we will return the gun, if we fall, it cannot be expected,"—clearly indicating there was something of the nature stated in this document. " Let us shew to the world that we are not that lawless sanguinary rabble which our oppressors would persuade the higher circles we are, but a brave and generous people, determined to be free." Determined to be free!—but, in the interpretation put upon that motto, is that the way these men intended, in point of fact, to acquire their freedom?

Gentlemen, I do not wish to fatigue you with the whole of it; but it goes on then addressing themselves to the soldiers. Then, if any man living can doubt that this is one of the most flagrant pieces of treason ever uttered, I cannot argue with that man, because his mind must be materially differ-

ent from mine. I cannot think that any man would doubt that this is one of the most abominable pieces of treason ever put up.

Then what do they state?—"We earnestly request of all to desist from their labour from and after this day, the 1st of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguish the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed." Now, can any man shut his eyes so close—can he wink so hard as not to see the nature of those rights, and the objects they had in view.

If that is a treasonable paper, I pray you to consider what was doing at Glasgow. That paper was seen first on the Sunday morning; it produced the consequences to which I have adverted on the Monday, Tuesday, and Wednesday; the news reached Strathaven on that day, and it was carried by a man who saw the state of the streets here—that they were in rebellion, and that the time was come to accomplish that object, and therefore a message was sent to Strathaven, and they marched out in the way I have mentioned. Now, I ask you whether it is possible to avoid saying, that these persons who marched out at Strathaven on the morning of the 6th of April were, in point of fact, going to co-operate in the measures or proceedings suggested by this Address.

Now, Gentlemen, let us see what anterior steps had taken place at Strathaven. I am now separating the case of the prisoner from the case of the individuals there concerned, because it will be important, in the first place, to ascertain whether any individuals were guilty of High Treason; because, if the party in general, of fourteen or fifteen, exclusive of Wilson, were not guilty of High Treason, I could not expect you to believe Wilson was. Therefore, let us go by steps, and consider whether these men were or were not guilty of High Treason; and the way to do that is, to see what was the intention with which they marched out of that place. It appears, that on the evening, late at night, on

Wednesday, a message reached this person. It appears, by the evidence of Brownlow, (who, by the by, was costive enough,) that a man came to Wilson's, he (Brownlow) being in the next room, being a watch-maker, who sometimes employed himself in making stockings at Wilson's,—it appears this man came there; that he wished Wilson to go up: Wilson said, "No, the night is wet, I will not go;" he did not hear any thing more; he did not know the place well enough to go, but he went into the room, and Wilson was gone; he then left the place. It appears, by the evidence of one of the Steeles, that he went down to Wilson's that night, where there was a congregation of men; the room was crowded, it was full—it was as full as it could well hold, and he described the party as being twenty or thirty; Wilson asked him if he had heard the news; he said, "What news?"—The great news from Glasgow—the people were up, and their brethren were expected to join them. You will find, on perusing your notes, and paying attention to the different parts of the evidence, that a party had marched out long before that, similar in size, and similarly armed. The news arrived abruptly, and unexpectedly, perhaps; it became, therefore, necessary that a party should immediately set about arming themselves—they wanted nothing but arms; in point of mind, disposition, and temper, every thing was right—their hearts were right placed for treasons, stratagems, and spoils; they immediately detached a party to get arms. It is in evidence, notwithstanding the way in which the testimony of John Thompson was given, and who was the only witness on whom my Learned Friend employed any observations—he said he was called only to prove a noise, and he talked about the trial of a mouse; and having done with that witness, he forgot any more of our case last night. Thompson goes down there at eleven at night, and the windows are screened. What does he do?—he overhears a noise. What noise?—the chopping of wood. And then it came out that Wilson sometimes burnt wood in his house, and therefore he was chopping wood before he went to bed for the fire in the morning. But what were all the people doing in

the house? is it necessary to have twenty or thirty people to assist you to split wood? But there was a debate—a loud discussion—a discussion which may be considered, and so it ought to be, a grave discussion, before they enter on this scheme. But the party left Wilson's house about eleven o'clock—the noise ceased; they returned about one—the noise recommenced. Where had they been during this interval? the occasion was urgent—they wanted arms—their brethren of Glasgow were waiting for them—they were to march the next morning—active operations in the field were to be undertaken the following day. Where, then, were those individuals who left Wilson's house between ten and eleven o'clock at night? ask Farey—Farey was seized in his father's house—he was urged out; and you will see, Gentlemen, from the manner in which Farey was taken care of—was surrounded by these men—you will by and by see the difference in the mode of guarding men who go by compulsion, from that observed when men go freely and voluntarily. Farey was placed between two men, and three pikemen before, and three young men behind him,—that looked like restraint; where a man is not to be restrained, they put him three or four yards in the rear. Now, Gentlemen, there you have a different mode of applying force, where the parties really mean to apply force. Farey was their man, not their man in heart, but he was their man by force, by restraint, and, in point of fact, he was forced along with them in the way which he has described. What do they do?—at the first house they go to they procure a gun; the next house they go to, they want a man from; the old man in the house, I think, says, "We have no man here—we have only our own family;" the women scream, and the party go on. The next house is the house of Alexander, I think, and they attack both the fore door and the back door; the people are armed, and they do not stir, and the man says to his son, "The gun is charged, you had better give it them."—"No, I will not."—"You had better." Then they begin to break the windows, and fire shots, to shew they are prepared; the consequence of that was, that young Alexander handed out a gun to them. They go on; it

was a matter of urgency; the following day was to be a grand day. They go on from house to house, and ransack five or six houses. Now, I pray you, Gentlemen, tell me, if you can—I would ask in point of fact any man, and I defy the wit of any man to tell me—for what earthly purpose these arms were borrowed in the way and under the circumstances that they were that night. Is it, in point of fact, I say, Gentlemen, within the scope of common sense—and a small portion only will be requisite—a very small portion—is it within the compass of common sense for any man to devise a reason why these men of Strathaven should rob the house of that unfortunate man at that hour of the night—to seize the fire-arms in the manner I have alluded to? They then go to the house of a merchant of the name of Cochrane; they tell him they are disappointed—they expected to find sixteen guns; they seize one from him, and get seven pounds weight of gunpowder, and twelve flints. For what purpose were those procured? was it for the purpose of marching upon this road? was it for the purpose of enabling them to have a grand field or parade-day in Strathaven—was that the cause? Is it possible that men of understanding are to be gulled by such observations as these?—it is not possible.

What is next done? They return about one o'clock in the morning. What do they do?—where do they go?—They go to Mr Wilson's house, and ground their arms. In point of fact they lodge the plunder of the night there. They or another party again go out—for there are two parties you recollect; another party go out and perform the same operation. Then in the morning, by break of day, five or six men are going into the back-door of Mr Wilson's, with guns. Where is Mr Watson, the standard-bearer of this armed band—this loyal band, for they are going to assist the King? Where is Mr Watson?—waving the flag at the door—they had no drum, but waving a flag is as much as beating a drum. He was waving his flag at the door; well, but then he went in finally, and they all came out.

Let us stay to inquire for a moment what this flag contains—on the one side, "the Strathaven Union, 1819"—then this union had subsisted some time in Strathaven, or it

was a false date; but surely loyal men like these would not put a false date on their banner. Is it not then certain that this union, composed of the sort of materials emitted from that house this morning, had existed for several months before? Is it not clear, from the inscription, "Strathaven Union, 1819," that their hearts were willing; they waited the occasion, and the occasion, unfortunately for that unfortunate man, occurred on the 5th of April. "Scotland free or a desart;" I seek not to inquire into the feelings or politics of any man—to me they are totally immaterial, as they are to you; but I ask you, Gentlemen, what construction you will put upon that motto? What construction you, sitting under the sanction and obligation of an oath to administer the law according to the facts of the case, will feel disposed to put upon that motto? Will you consider that that means any thing about vales and hills and verdure, and ships and navigation and commerce? If you do, I only say that I differ with you; but that is no matter—you may, notwithstanding, be right, but I appeal to you, whether you can understand that in any other way, than that construction which is to be drawn from the language of that document, and that document alone.

Well, Gentlemen, they march out from Strathaven. What do they do then? One or two of them are still unarmed; and therefore it is material, for the purpose of qualifying themselves for the expedition, to seize another gun if they can. They attempted Gavin Cooper's, a sturdy old Scotchman. He said, "I will not do it." They then clapped their muskets to his breast, and astounded his man and maid, but he stuck to it, and at last they struck off; that may be an argument against their being traitors, because they were cowards—but they went away without effecting their purpose. This was after they left Strathaven.

Then it is said they marched eight or ten miles on the road—but then nobody knows. There is no evidence what became of him afterwards; but we will take it in the most favourable way for the argument of the other side. At Kilbride they separated. Did they so? Is there no reason for their separating? Gentlemen, when you and when other

men come into a court of justice, it is not expected you should leave your common sense at the door. Was it not clear, from the information they had on the road, that all was quiet and tranquil at this place, and that the news they had received the night before was incorrect; and therefore these fifteen men could not expect to come here, and do any thing against the military, or the peaceful part of Glasgow? Is it not clear that something or other came across their minds, which rendered their further prosecuting that expedition preposterous, absurd, and ridiculous?

Now, Gentlemen, I pray you, was there an insurrection, accompanied by force? Does the seizing of guns—does the marching out from this place, with a banner, under these circumstances—do all these circumstances shew an insurrection, or do they not? If they do, about which I shall not waste a single observation to you, for what purpose was it, in the language of Mr Justice Foster—in the language of Lord Hales—in the language of every learned Judge who has tried and discussed questions of this sort, *quo animo*, with what intention—with what design—for what purpose, did these unfortunate, deluded men march from Strathaven? Was it for any private object of their own? Was it to avenge or vindicate any private quarrel? Was it to do any insulated act? No—none has been pointed at in evidence, and none but that to which I have adverted has been suggested on the other side; because, surely to tell you that this man might be marching out to assist government, is too idle—I mean no disrespect to the Gentleman on the other side—he must make the best of bad materials; but it is too preposterous, too absurd, for one moment to indulge in any hypothesis of that kind; then, if they went out for a general purpose, I say, in point of law, by all these authorities, it was a levying of war.

Then the next question is, if I have succeeded in convincing you, and if I have not, I shall not be sorry for it—but if I have succeeded in stating correctly the evidence before you, in my judgment it must appear there was a rising and insurrection, and that for a general purpose, and that there was a levying of war in some persons—then was that

unhappy man at the bar implicated, involved in that proceeding or not? Gentlemen, I admit, if it shall be made out clearly to your satisfaction that that man was acting under the influence of force—if what he did at that time was the result of personal terror—a well-founded personal terror, or apprehension for his personal safety—if, in point of fact, you shall be of opinion that that apprehension continued throughout the whole of the line of march from Strathaven to Kilbride, at which place he appeared to be; if you should be of opinion that that fear continued throughout the whole of that time; and if that was the first and the earliest opportunity he had of making his escape from that force, and he availed himself of it as early as he could, I admit distinctly and unequivocally that that is an answer to this charge; and that I may not mislead either you or myself on that subject, I shall cite a short paragraph from Foster's Book to that extent—it is in page 216. It is thus stated: "The joining with rebels is an act of rebellion, or with enemies in acts of hostility, will make a man a traitor in the one case within the clause of levying war; in the other, within that of adhering to the King's enemies; but if this be done for fear of death, and while the party is under actual force, and he take the first opportunity that offereth to make his escape, this fear and compulsion will excuse him. It is, however, incumbent on the party who maketh fear and compulsion his defence, to shew to the satisfaction of the Court and Jury that the compulsion continued during all the time he staid with the rebels, or enemies. I will not say," he says, "that he is obliged to account for every day, week, or month —that perhaps would be impossible; and, therefore, if an original force be proved, and the prisoner can shew that he in earnest attempted to escape, and was prevented, or that he did get off, and was forced back, or that he was narrowly watched, and all passes guarded, or from other circumstances, which it is impossible to state with precision, but which, when proved, ought to weigh with a jury, that an attempt to escape would have been attended with great difficulty and danger, so that, upon the whole, he may be presumed to have continued amongst them against his will, though not constantly under an actual force or fear of imme-

diate death, these circumstances, and others of the like tendency, proved to the satisfaction of the Court and Jury, will be sufficient to excuse him."

Gentlemen, the Learned Counsel referred to a case in the early part of that book, called Mr Growther's case, which does not warrant any argument upon the present occasion. That was the case of a tenant of the Duke of Perth, who joined the rebels, and continued with them several months, and it was contended that he was under restraint, and some evidence was given of the sort of obligation which subsisted in this country at that time with respect to the tenantry following their lords, and he argued that was a sufficient answer to an indictment, but he failed in that. The passage I have read is that on which you are to form your judgment.

Then let us see what are the facts of the case, as applied to Wilson. Wilson's house appears to have been the rendezvous of all these parties—the meetings take place at his house; he is the person to whom the message from Glasgow is sent—he is the person, in point of fact, at whose house all the consultations and deliberations of the preceding night take place, and which terminated in those nocturnal disorders and seizures to which I have alluded. It is somewhat surprising, if I may venture to judge of you by myself, I should think it surprising if ten or twelve traitors should come into my house, and begin to make it the head-quarters, the place in which they were to consult and deliberate on their treasons; that they should go out in the middle of the night and return in the morning with arms; that they should, on the following day, march out from my house, I being a loyal subject, with colours flying, armed as these men were armed. I appeal to your knowledge of life—I appeal to your understandings, whether a supposition of that sort is not so monstrous, so preposterous, as to be altogether unworthy of belief. Is it, I pray you, within the scope of human probability? Is it a thing which is likely to have happened, and I ask you what you would have thought of it? Would not you have sent for the civil power? Would not you have reasoned with them, and have said, "Why, on what ground of impudence and audacity have you dared

to come here to make my house a den of thieves, when you know I am a loyal man? You know you are preparing for acts of treason and revenge; therefore go to your proper associates, men who are mixed with you in the enterprize." Would not that have been the language of loyalty? Was that the language of the prisoner at the bar? Was that the language, would that have been the language of a loyal man? If it would, did Mr Wilson adopt it? Was that his conduct or his argument?—If it was not, what then?—As Mr Wilson, if a loyal man, would have adopted a line of conduct directly opposite to that, and that he would, no two men would differ in opinion, what is the legitimate and fair inference from a line of procedure like that adopted by this man?

That is not all—you have the evidence of several individuals who were in the house the night before. You have the evidence of several men, and I do not mean to throw imputations upon these men; but I think, from the mode in which they gave their testimony; from the shyness which some of them exhibited, that at least you have not got more than is true from them. I think they have not exaggerated, or set down aught in malice against Wilson. You have it in evidence from Shearer, from Steele, and from several individuals who were in the house the night before, when these matters were discussed; and one man was obliged to run away, because he would not join them, to avoid being run through with a pike. I ask you what Wilson thought then. It appears the house was filled with a congregation of individuals throughout the night; five or six men were seen going, in the morning, in at his back-door, which is entered by a ladder from the church-yard, a place, therefore, of secret approach—still treating this house as the head-quarters, as the house of the individual to take the command of this expedition, or it was nothing at all. Then they march out. Does Wilson march out under force? Does he march out manacled or guarded, as the other man Mr Farey was? How does he march out? I think if I have company at my house, and I am the last person, instead of marching out five or six yards after them, I may shut the door, and say, I do not like this; these fellows have forced me as far as this, but I do not like

it. Would not you have done it, or would you have gone at all? I think not. Why hide the sword in his hand? All of them say he had a sword; one man found the point sharp. "He had it here," he said; "he only saw the handle." It is not likely the handle should be there, and the rest at home; a sword may be as good with a wooden hilt as with a basket one, or any other. How did he march out? He marched out, it is agreed on all hands,—stated by the Glasgow hawker, Rownie; he admits he marched out the last in the rear—some say two or three yards, but uniformly they state Wilson was the last man of the detachment, and marched out with a sword in his hand, in the manner I have stated. Is that marching out because I am compelled to march? What was the compulsion on his mind? Where was it? We will come to it by and by, and then you will see what a notable thing it was. But what is the evidence of Mrs Hamilton, upon whose veracity repeated attempts were made last night without success? and my Learned Friend having recruited himself again, attacked it this morning, till he exhausted the subject; and then, in point of fact, he says, she is the sister of one of these men. What then? Is there any imputation on her character or credit? You have that advantage, which is a most valuable part of the constitution of which you are a part, namely, of seeing the witnesses before you; of seeing their demeanour, and of having an opportunity of seeing whether the witnesses tell you the truth, and nothing but the truth, and the whole truth. You had an opportunity of seeing and hearing what that woman said. You heard how she was cross-examined. Was there an imputation attempted on her character? The poor woman had heard that an attempt was meditated upon her character, and she, with that honest simplicity which belongs to truth and integrity, was induced to bring two certificates. Is that an objection to her? Certainly not. But what attempt has been made to throw any imputation on that female? She had a brother implicated; where is the evidence of that? We have the gratuitous assertion of the other side that she has a brother who has left the country. I take my Learned Friend's assertion for any thing out of Court, but for nothing in Court. What

does that woman say to you, Gentlemen? and if you believe her evidence, and that you can disbelieve it, I cannot entertain the slightest apprehension—What does she say? She was in the house on the morning of this presumed force and restraint; she was there among a party of individuals congregated for this expedition; she saw several persons she did not know; and she did that which is natural to female curiosity, or any curiosity. She says, "Well, James, what! are you going upon this expedition?" "Yes." Is that the language of fear?—is that the language of force?—is not that, in point of fact, the language of a man who was standing there as the head of, I do not know what to call them, but incipient traitors?—traitors they were at that time, because at that time if they had ceased, in point of fact, at that moment they were all traitors by the act of the preceding night. But was not he set there, and what does he say? The arms they got during the night were the subject of complaint by many of them; they complained of their arms; and what does this man say, who was averse to Treason? who was forced out, according to the other side? He said, "I am glad of it; you ought not to have any arms; arms! what! to subvert government and the constitution? No—you may get arms in your progress—you may get two muskets at Scott's, one at Park-head, one at Hock, and at such a place—you may get a gun at Mr Cooper's." They attempted to do that. Now, I pray you again, ask yourselves, turn yourselves into yourselves, and ask your own minds whether a man, who was about to be forced out on a subject of this sort, would have used that language on the eve of their departure?

Well, what does he do?—he marches up the village along with these persons, still preserving his situation in the rear. Does he just see them out of the town?—no; he is found at Kilbride, at a distance of eight miles, in the afternoon, and he goes to the house of a person carrying on the same trade, with whom he is acquainted. Now, I beseech you, attend to the language and conduct of this man at that time; and if you should be of opinion that the language and conduct of this man at that time shewed that he had

been acting under the influence of permanent and durable force from the time of leaving his house till that time, I ask you, in the name of all that is right, and honest, and honourable, to acquit him at once. He goes in—he says nothing. I throw no imputations on that man; I could make strong observations on him—I could make observations on the evidence of Thompson, which would affect to a certain extent his moral character; but I abstain from doing it. What did he say when he went in?—nothing at all; he asked for a pipe; the man sent out his daughter for a loaf, and then he went himself for tea. "During this time, did any conversation take place?—None at all; we talked about stockings, and new-invented stockings, pantaloons, and breeches, but not a word about the party that passed, except that he asked after the sons of a man of the name of Fleming, were they there; having got an answer to that, his curiosity was gratified, and he ceased all further interrogations." I do not know how it is; but if I had seen a party of that sort, and seen an old friend belonging to it, I should have put some questions on the subject; but none were put. Now, see how that stands;—after he got his tea, Thompson set him up the lane, or along the road, for a certain space—about a mile, he said. In going out of the house, the prisoner at the bar said, "Now, mind, if I should be called to account for this, you can be a witness that I was upon business here." Now, if he stated to us all that took place before, the only business was smoking, eating a roll, and taking tea—there was no other business he went through; you cannot call the talking about the hose business, because he was there by accident. What did Thompson say in reply to that?—"I can say that you were here," negativing his being there upon business. "If any thing happens whereby I should be called to an account, you will be a witness to prove that I was upon business here."—"I can be a witness that you were here." And he certainly was as good as his word; because, at least, he proved yesterday that he was not there upon business. Now, Gentlemen, that was a species of dilemma in which my Learned Friend felt himself placed by that sort of evidence. He argued in this way:—

says he, these were friends, and acquaintances, and neighbours; he did not like to say a word about it, and it was very unnatural that he should. Mark what he said to that hawker,—"Why, James, this is a bad business."—"Ay," says he, "it is; but I will get away as fast as I can." He did not say a word of that at Thompson's. Why did he turn off at Thompson's, if that was not the first opportunity for him to escape, because they had encountered people on the road? It was as clear as the sun at noon-day, when they arrived at Kilbride, that their expectations at Glasgow were at an end—that the foundation of that pinnacle of glory which they anticipated was sapped and taken from under them; and therefore it was wise for them to take the hint and march off. What is that all to prove, but the intention with which he went out? You have it in evidence that he had a sword, which he sharpened by cutting the point a day or two days before; and you have, moreover, evidence as to whether this man's feelings and principles were of that loyal nature and description which the other side would have you believe. What is the case of Mrs Hamilton the night before, when she said, "You are an old reformer—what do you say to these things?"—that was Monday night she was alluding to. Was it the first time this had been broached in mind or contemplation? "What do you, an old reformer, say to these things?" What did he say?—"Why," says he, "I hope they will win it." Win what? when you talk of winning, you play for something—there must be some stake; when I talk of a contest, there must be some contest, or emulation, or it would be idle.—"Where so many lives will be lost." What does he say?—"They cannot be lost in a better cause." That was the cause which they expected to win. Then it was a cause in which he thought life and death might be at issue in which he thought there was to be a warlike competition—a warlike force,—something which might entail upon the parties certain death and destruction. That, Gentlemen, is the evidence on the part of the Crown; and I ask you, whether, as it stands, you can have any doubt, with respect, in point of fact, to all these circum-

stances, necessary to constitute this offence on the part of the prisoner at the bar.

Four witnesses, I think, are called before you to-day. The first witness is a female, I think, of the name of Hamilton, Jane Semple, wife of John Hamilton. Now, Gentlemen, she was called to prove these facts, the effect of which you will have to judge of, that she was at Strathaven on the Monday; that she went from Strathaven to a place called Prior-Hall; that she went about twelve o'clock, in company with the prisoner at the bar; that they went to Prior-Hall; that he staid there till towards evening; and that Prior-Hall is four or five miles from Three Stones, where, on the Monday or Tuesday evening, there was a meeting. For what purpose was that?—To shew that it was improbable that he was at the meeting at Three Stones? But that meeting took place on Tuesday night, I think; but no matter for that. I do not say Wilson was at Three Stones—it is immaterial to me that he should be there—there is no part of my argument which renders it necessary that he should be there. The moment you connect Wilson with Stevenson and Robertson, the other man at that meeting, that moment you make the declaration, and the acts of these men in his absence, good evidence, provided they have for their object the fulfilling of that common view and purpose ascribed by this indictment. Therefore, it is quite clear that the meeting of Three Stones was an act in which Wilson was implicated, and for the proceedings at which he is equally answerable. I only mention this to shew that they knew of the proceedings at Glasgow, and that it was important to get arms. There was a proposition made to borrow arms. I do not know what that means; it may mean what was done in the country I come from; it is very like plundering or robbing for arms; but you know best, whether seizing a gun, and forcing a man, is the way loans are effected in this country. A man may break open your stable-door, and take your horse away, and never let you hear any more about him or your horse,—that is the way they purpose to borrow arms.

The next witness is Mrs Bell. Gentlemen, I forbear to make many comments upon her evidence. You saw the

mode in which she gave her testimony, and I think you would make an observation which I made to myself, that no human being could believe what she was saying. She is the sister of the prisoner at the bar; and she says that her husband is the person to whom she made repeated observations during that night. Why was not he called to-day? We have been twitted for not calling Mrs Young, because she was present at a conversation with Mrs Hamilton. They knew that, and why did they not call Mrs Young? if Mrs Young could have given any evidence on the occasion, she was as free to be called by them as by us—why did not they call her? that is an observation made so often, it is almost worn out and cast off. But why did not they call Mrs Bell, since a great portion of the Learned Counsel's address, last night and to-day, was occupied in complaining of the difficulty he had of getting witnesses to the fact? for he asserted they had all run away and absconded, and that he could not get a single man of that body of pikemen and gunmen at the house of Wilson to come before you to-day. He felt it would be important to support the evidence of the sister—he felt it of the utmost importance to sustain that part of the case, which was the only part that bore on the question at issue; they had the control of the witness; he would not be an unwilling witness; why was not he put in the box to sustain the evidence of the sister? why was not he called to prove the facts of that eventful night? where is the daughter of this woman?—Oh, I do not like to bring the daughter.

Lord President.—It was the daughter of the prisoner.

Mr Serjeant Hullock.—Why did not they bring the daughter of Mrs Bell? If the sister is a good witness, or if they thought she was liable to some observation, why not get rid of that observation, or reduce it and weaken it by producing as many witnesses as they could to that fact? That woman talks of threatenings, and swearings, and cursings, of the most dreadful and destructive kind; she tells you she heard these things, and that her brother, in the midst of all this turmoil and these imprecations, went to bed. Well, but he could not get out during the night—no, the house was sur-

rounded. She got out. Why did not she, if this man was placed in such jeopardy, and threatened with death and destruction if he did not join them,—why did not she go to the Captain? She mentioned, that no constable came to their assistance, because they made no complaint to any body. Was a man to come in and say, do you want any help?—I am a constable. She made no complaint—she was out.

But there is another fact in this case, which, in my humble judgment, gives the most damning answer to the evidence of this woman. Wilson himself was out that night—Wilson himself, by the evidence of that hawker, Rownie, was out at ten o'clock. Where was he?—Why, he went to his house. He told you he heard him call. Then, Gentlemen, was Wilson at that time, in point of fact, at liberty?—was he his own master? He could go to make an inquiry of this man—what did he go to inquire of Rownie?—It is conceded by Rownie that it was to ask if he was going to Glasgow the next morning. If he could go to make that inquiry, was it not equally competent for him to take himself altogether off, and out of the way? How is that reconcileable with these oaths, and firings, and burnings, and swearings, which that old woman told you? It is impossible to place any reliance on that story.

What is the next person? Rownie himself is called; and that is all the evidence of actual force, which is merely what took place the night before, and which might as well apply to any other person as Wilson, because nobody mentioned his name, and it might apply to anybody who thought it wiser to relinquish the proceeding at that period. Rownie went the night before, and he found Wilson there; he did not go in, but he found a man there, who said, "Come, come, no excuse to-night; if you do not go, I will shoot you through the head." Rownie went away. Would not he have gone and said, Here are persons round Wilson's house, and they are going on a traitorous expedition; they wish to force my friend Wilson; he says he will not go, and they threaten to blow his brains out—by this time, perhaps, he is no more. Oh, no! after that, he went out, and was in the

room of a man of the name of Penny. This witness states he overheard Wilson call up stairs to him, to ascertain whether he (Rownie) was going to Glasgow the next morning. Then, in the first place, I say that Wilson might have gone away at that time. In the next place, I submit there is something singular about this evidence. Rownie stated he was in the habit of going to Glasgow twice a-week—the days were uncertain, because it depended on the exhaustion of his goods,—when they were out, he resorted here to replenish them; and it appeared that he had not been at Glasgow on the Monday—nay, he had not been there for ten days preceding. How does that square with the former part of his evidence? It is no matter; these are little matters—they do not affect the evidence in the cause.

Recollect the evidence of John Hamilton, a young man of most decent appearance, the clerk to a writer at Strathaven, who stated, that he resided immediately opposite to Wilson's; and also told you,—and I think you will hardly be prevailed upon, on such loose and dubious testimony as that of Rownie, to impose on that young man the imputation of wilful and corrupt perjury—and perjured he must be if that evidence is not correct. What is the evidence? —That he was standing opposite Wilson's door. Wilson came from his house, went into Rownie's passage, asked Rownie if he was going to Glasgow the next day; Rownie said he was about to set off instantly.—I care not whether he did or not. What did Wilson say to that?—"Then let them know at Glasgow that we will be up to-morrow morning," or, "we will be with them in good time."

Now, Gentlemen, I pray you let us not be led away by zeal, or declamation, or words. Let us advert to the evidence in the cause; and let us consider, that we have all of us duties here to perform. Let us consider what the meaning of that part of the evidence is. It is conceded by Rownie himself, that an inquiry was made about Glasgow. Then, are you to suppose that that young man could have manufactured the other part of the evidence for the purpose of this cause?—you must be of that opinion, if you do not believe him. I have the young man in my eye this moment—a de-

cent, respectable young man—his demeanour was so; he could have no purpose to come here and commit wilful, corrupt, and abominable perjury, to deprive an individual —a harmless and inoffensive man, as far as he is concerned, of his existence.

I beg pardon for occupying so much time. I draw to a conclusion. I have glanced at all the material facts. I hope I have omitted nothing. I have not intentionally mis-stated or over-charged any thing. I have stated my conception of the law, but that you will receive from the Court. The facts are before you—those facts are exclusively in your province to decide on; and it is on those facts, such as I state them to be—it is upon inferences, not to be drawn by strained argument, but from the evidence in the case, for you to say whether there was or was not a gathering of power, in the language of some of the Judges, by force, or an insurrection, in the language of others, by force, for a general purpose; and if you shall be of that opinion, then, whether or not the prisoner at the bar was implicated in that transaction. If you shall be of an opinion in the affirmative, that there was an insurrection of armed men for a general purpose, and that this unfortunate individual was one of that party,—your verdict then must, I fear, be bitter to this unfortunate man. But, Gentlemen, you have, it is true, a duty to perform to the prisoner, but you have one, also, Gentlemen, to perform to your country,—you have one to perform to yourselves and to your posterity. You are acting there under the solemn sanction of an oath—you are bound by that oath to deliver such a verdict as the evidence shall imperiously call for at your hands. If there be any doubt—by that I mean such an honest doubt as you can reconcile to your consciences and to your oaths—the prisoner is entitled to the benefit of that doubt; but if, after duly deliberating upon the facts of this case, you can find no room or hesitation for thinking otherwise than that that which is charged in this indictment has been truly and correctly charged,—that this unfortunate man did, in an evil hour, lend himself to a conspiracy of the sort and nature imputed to him by this charge,—you, as men of integrity—

not now be the law of Treason in America, (though in most respects, retaining our common law,) because they have no king, and a different form of government; and Treason in that country must be different from Treason in this. Therefore, you must take the law of Treason from nothing but the positive and statutory law of the land. The legislature has a right to say what shall be Treason;—it has said what is Treason; and that must be the law for you to go by.

Now, Gentlemen, the law of Treason is to be found in the statute of Edward the Third, which declares, in the first place, that it is Treason to compass and imagine the death of our Sovereign Lord the King. But upon that branch of the statute it seems not very necessary for us at present to dwell, as this case does not rest so much upon that branch as upon the other, which declares it is Treason "to levy war against the King in his realm, or be adherent to the enemies of the King in his realm, giving to them aid or comfort in the realm, or elsewhere, and thereof be provably attainted of open deed by the people of their condition." But, Gentlemen, at the same time I think it is proper to remark to you, what, indeed, will be obvious to yourselves, that although the first Treason of compassing and imagining the death of the King does not necessarily by any means imply the other Treason of levying war, inasmuch as a man may compass and imagine the death of the King by private and secret means, confined to his own breast, by a pistol or dagger, distinct from levying war, yet, on the other hand, it is impossible to conceive there can be a levying of war against the King which does not necessarily include the compassing and imagining the King's death; because no people levy war without hopes of success; and if war is levied against the King, it is not necessary for me to state the probable, if not necessary, danger to the life of the King, if that war is successful.

Gentlemen, that is the general law of Treason, as fixed by the statute of Edward III. But in the 36th year of the reign of our late Sovereign George the Third, a supplementary statute was passed, if I may so call it, in some de-

gree enlarging and extending the statute of Edward III., and which I need not tell you the legislature of George the Third had as much right to enact as the legislature before had to enact the old one. By the statute of 36 George III. it is declared to be Treason not only to levy war, but if a man shall compass and imagine, invent, devise, or intend to deprive or depose the King, his heirs and successors, from the style, honour, or kingly name of the Imperial Crown of this realm; if he shall compass or imagine, invent, devise, or intend to levy war against the King, his heirs and successors, within this realm, for the purpose of compelling him to change his measures and counsels, or to overawe or restrain both or either House of Parliament;—that is the statute of George III., not only declaring the actual levying war to be Treason, but the compassing or imagining, inventing, devising, or intending to levy war against the King, in order, by force or constraint, to compel him to change his measures and counsels, or in order to put any force or constraint upon, or to intimidate or overawe both Houses or either House of Parliament; "Provided always," the statute says, that, as in the case of compassing and imagining the King's death, it must be discovered by some overt act—"Provided the person shall manifest his intention by publishing any printing or writing, or by any overt act or deed." He is not to be punished for the intention alone, unless he manifests it by some writing, or by some overt act.

Now, let me say a word to you on what, I think, has created a little confusion in the law of Treason, which is the use of the technical words "overt act and deed." Now, Gentlemen, an overt act and deed, manifesting an intention to commit any of these species of Treason, need not necessarily be an act of Treason in itself;—for example, suppose that there is an undoubted scheme proved or admitted to raise an insurrection, or to levy war against the King, for a general purpose. There can be nothing more innocent in itself in the world than the ringing a bell, the firing a skyrocket, the beating of a drum, or anything of that sort; but if it be proved at the same time that any of these were to be the signals of the insurrection, then these acts, perfectly in-

nocent in themselves, if done by a person who was aware of the object of them, is an overt act of Treason;—that is to say, it is an overt act, intimating the treasonable purpose the man has in view, the raising an insurrection, and giving a signal for it. In the same way, in the Treason of compassing and imagining the King's death, nothing can be more innocent and harmless than the purchasing pistols, and arms, and powder, and so forth,—it is done every day, and it may be perfectly innocent in any individual; but if you once prove a conspiracy on his part for compassing and imagining the death of the King, then the providing arms and ammunition of any kind for that purpose, a thing perfectly innocent in itself, becomes an overt act of Treason;—in other words, it is in fact a circumstance manifesting the treasonable purpose of his mind.

Now, then, Gentlemen, that being the law of Treason with regard to the levying of war, let us see what is the law as to the circumstances which constitute a levying of war,—because levying war is a wide and indefinite word.

Now, Gentlemen, the authorities have been read to you; but I state it as the undoubted law of the land, with concurrence of the whole Bench beside me, that in order to constitute the levying of war, it is not necessary there should be battles—it is not necessary that the troops should be in regular battalions, or that they should be clothed like regular soldiers; if that were the case, there could be no Treason under the statute of Edward III., because the implements of war have been altered since; we must have persons armed cap-a-pee, and with bows and arrows; therefore, the circumstance necessary to constitute a levying of war, is not that there shall be a regular trained force—not a regular army; and indeed, from the nature of the thing in common sense, I am sure it must strike you, that except where a foreign enemy invades the country, war never can be levied in that manner in the commencement of an insurrection; if an insurrection is to be raised, they must provide arms, and they must get them in the best way they can; they will be ill disciplined and ill arrayed at first, but as the insurrection gains ground, these things may be acquired, and discipline

learnt,—like to our unhappy rebellion in 1745,—how did that begin with that poor deluded Prince who landed at the head of, I believe, not many more men, or better armed or clothed, than you have at this meeting at Strathaven? When he landed upon the coast, he was at the head of nobody but the boat's-crew who landed him, and some foreign officers, and he was joined by a few half-naked Highlanders. Now, I state to you as law, and you will see it is sense, that he and his followers, from the highest to the lowest—every one of them was as guilty of Treason in the act of first joining him, as they were at the last hour. I ask, when did that Treason commence?—if it was not when he first reared his standard—when the first people joined him in rebellion—when did it commence? Was it when the Camerons joined him? Perhaps it may be said that is too few number—how could they expect to overthrow the Government of Britain—this single clan, disarmed as they were?—Was it when they marched to Fort-William and took it? In short, what is a treasonable number, as the Counsel for the Crown very properly put it?—what is the quantity of arms persons must have? the offence is not in their numbers, not in their force, but, in the language of the law, and all the authorities, it is in the object and purpose which they have in view. If they rise to effect a general public purpose by force and numbers, that object renders the rising Treason, be the number great or small. And, indeed, Gentlemen, how is an insurrection to be raised?—how is a regular army to be got together, but by the march of small numbers to the place of rendezvous? How are people to raise an insurrection?—A great town may turn out in great numbers, but if people in the country are to rise, how is it to be effectuated, but by each parish arming its inhabitants, and marching to the place of rendezvous? and then, as they all assemble, that is admitted to be Treason. But is it less Treason when they march with the same purpose? I lay down, as the undoubted law of the land, that the smallest body which rises in arms to effectuate a general purpose (they may have more or less hopes of success arising out of their number) is treasonable, and constitutes a levying of war.

Gentlemen, that being the law of the land—that it must be a public general purpose—let me state to you, for the purpose of illustration, and of rescuing the law of the land from what was supposed, I think, by the Counsel for the prisoner, to be rather a hard and inexplicable part of it—that it is said that even a general purpose of throwing down all inclosures is Treason—it was admitted by the Counsel for the prisoner that that was the law of the land; but it was said that is a strange case, and the Counsel for the Crown, though he stated it to be the law, did not explain it; but it is not a strange case, it is founded on the clearest and most undisputed principle of law. Take the simple case of inclosures—has not every man, by the law of the land, a right to inclose his grounds as he pleases, or to inclose such commons as he is entitled to inclose, either by a decision of the Court of Session here, or by the decision of the Parliament in England?—he is entitled to do it by the law of the land; and therefore a rising to prevent that is a usurpation of the authority of the legislature; and the same with regard to the chapels or churches. By the law of the land, every man has a right to worship God under his own fig-tree, in peace and quiet, according to the forms of his own religion; and therefore, if a person undertakes to pull down all chapels of a particular sect, he is usurping the authority of the King and his government, and the legislature of the land, which alone can control the liberty of conscience, or lay any restraint on it, if any restraint ought to be put upon it at all; therefore, any persons who take the law into their hands, and pull down these places, are guilty of levying war against the King; because they are usurping the public authority of the land; and it is not a strange case in the smallest degree, that it should be Treason to level all inclosures, because it is flying in the face of the legislative authority, and usurping that authority that is vested in the legislature alone.

Gentlemen, I think I have now stated to you all that is necessary upon the general law of Treason, and the question seems to be, how that law is to be applied to the present case?

Now, Gentlemen, it was well stated by the Counsel for the prisoner, that in most cases of Treason, juries have always had a proof by witnesses of some great conspiracy going on, more or less extensive, upon the part of the person accused, to be proved by persons present at it, or by writings of their own, which indicate that conspiracy; and no doubt that is the common case, because it has seldom happened that persons intending to commit Treason, have been so daring as to avow their purpose in the face of day; but here there is no occasion for the production of a private or a secret conspiracy. Treason was openly proclaimed in the streets; one of the most treasonable proclamations I think that I ever met with, was openly, in great numbers, posted in the streets of this city, and most of the neighbouring villages, and at Strathaven in particular, as I shall call your attention to hereafter, openly posted up, so that every body might read it. That Address you have in the indictment—a copy of the indictment you will be entitled to take along with you—that Address you can read, and therefore I will not read it at length; but the substance of it is calling upon the people to desist from work from that day, telling them that they are determined to assert their rights by force of arms, and calling upon the soldiers of our Sovereign Lord the King to assist them; appealing to them for their assistance; desiring them to look at Spain, and there behold the happy effects resulting from the union of soldiers and citizens; telling them they are determined not to return without the accomplishment of their purpose—" to return in triumph, or to return no more."

Now, Gentlemen, if persons acting under the influence of a private conspiracy, which has been proved at the trial—if persons are proved to act in the furtherance of that conspiracy, their acts and deeds connect with the conspiracy, if they be in furtherance of it, and make them guilty. Now, Gentlemen, in the same way, where there is this open and avowed call on the people to commit Treason—I say that every man who acts under and obeys that proclamation, except by force and fear, is a partaker in the Treason which that proclamation calls upon him to commit. That again

illustrates the proper meaning of the word overt act—striking work, for example, by a number of workmen altogether, is not a lawful act, because it is a combination to effect something in an improper manner; but it is not Treason in itself; but if it is in furtherance of a private conspiracy of Treason, or in furtherance of a published act of Treason, that the so striking work under that proclamation is an overt act of Treason, there cannot be the least possible doubt. Then, Gentlemen, you have the foundation of Treason laid in this open and public proclamation, calling upon the people to strike work from that time forward, and never to resume it till they have accomplished their purpose; calling on them to rise in arms for the vindication of their rights —that is the public and avowed object; and therefore I say, that there is not the least doubt that any man, or body of men, who lent themselves to the purposes required of them by that proclamation, provided it was not from force or fear, are guilty of Treason; but more especially those who arm as desired by that proclamation—who rise in arms —who proceed by force as far as they go in the purposes of that proclamation, are most unquestionably guilty of Treason. Neither, Gentlemen, is it necessary, to constitute Treason, that it should appear that the purpose and the the means were plausible, and likely to succeed; of that, as in all other cases of crime, the party must judge for himself. He has a public object in view, to effect by force the purposes of that proclamation—to rise in arms. And whether now, in your sober judgment, these people, who so rose in arms, or intended to rise in arms, had a reasonable prospect of success, cannot affect their innocence or guilt in the smallest degree. I presume no mortal thinks—it is impossible for you to think—that this poor detachment of Strathaven thought they were to overturn the government by their individual strength. It is impossible; but there was a general purpose for the whole country to rise; that was ordered by the proclamation; that was what was expected; and all persons were intended to form one great substantial body at one focus, and then to accomplish that by the power of numbers, which each body could not do by

itself; and therefore, Gentlemen, it would be a most singular doctrine indeed, to hold that when there is a conspiracy, or an attempt of this kind to raise the country in arms, it is not Treason; in truth, persons might rise in parish after parish, and yet not be guilty of Treason, till two hundred thousand were got together. No doubt they will not succeed till they assemble in that great body; but how are they to assemble in such a body, unless they march in individual detachments? and by so marching, each party is doing all it can by itself in furtherance of the conspiracy; it lends its individual force and influence, if it has influence, to the furtherance of that object, which cannot be carried into effect till the bodies are all joined. Gentlemen, that is the undoubted law of the land; and now I come to apply that law to the facts before you.

Gentlemen, it is my duty, and I am afraid it will be a tedious one to you, but I trust that you will not grudge it, considering the serious duty you have to perform, and the serious nature of this case, to go through the evidence in this case. I pass over the first witnesses to the declarations, because they are thrown out of the case.

The first witness called is James Thompson of Strathaven. He says, "he resides there, and is a carter; that he "knows the prisoner, and recollects being near his house on "Wednesday the 5th of April, between eleven and twelve at "night; he went both to the door and window; the window "was screened; he heard a great noise in the house; a great "knocking and hammering, like a smithy; he heard a good "many voices, and persons going in and out." And now, Gentlemen, before going further, this leads me to make a charitable interference with regard to one of the witnesses for the prisoner: I mean the woman, his sister, who swears she heard great noises in the house; and it appears there were noises. Whether there were those actual threats of murderous intentions, and so forth, is a matter you will consider afterwards; but it appears there was a noise. "That "upon that, this witness, James Thompson, ran back from "the door—he did not see any thing; he was not very near "them. Upon the Thursday morning he went down the

Peter Barr; "that he knows William Watson; he saw "him going into Wilson's house, with a pole upon his "shoulder like a flag-staff; that there was no flag upon it "at that time; and soon after saw him come out with a "flag." A flag, therefore, was found in and brought out of the prisoner's house; at least there is no evidence that it was carried in by any other human being. This man went in only with what this man took for a flag-staff; but he swears, and is positive, there was no flag upon it; "that "he waved it when he came out; that the witness only ob-"served one side of it, and on that side was inscribed, "'Strathaven Union Society, 1819.' That when he came "out, there were only some boys in the street; that a short "time afterwards ten or a dozen other persons came out, "and a little afterwards Wilson came out last; some had "muskets or guns, and some pikes, the prisoner had the "blade of an old sword; they carried their arms mostly on "their shoulders; they passed where the witness was stand-"ing; that there were three in the first file with guns; "that the man with the flag, he thinks, was in the middle of "the party; he is positive he was amongst them, and march-"ed past him; the prisoner Wilson still continued the last; "they were in the ordinary walk or step. That beside "those he has mentioned, there were John Morrison, Wil-"liam Howat, Robert Hamilton, and William Robinson, "and several persons whose names he did not know; that "they were all Strathaven men, or lived there at the time, "except one man, who was a stranger to him; that he is "not certain as to what arms that man had; that he heard "his name mentioned during the time Wilson was with "them; that they marched down a bye-road that leads to "the Glasgow road; that he then went to an eminence and "saw the party and their flag on the road; that from that "eminence he could see more than a mile along that road; "that they were marching along the road when he first saw "them; that he did not stay there till they were out of "sight; that Strathaven is sixteen miles from Glasgow; "that he knows a place called Kilbride, which is half-way, "in the direct route, to Glasgow; that he did not see any

"thing extraordinary about the prisoner's house the night "before. He knows Mr Cowper's house, about a mile "off; advertisements are generally put up at Strathaven, "for sales or roups, at the corners of streets, the fronts of "merchants' shops, and the corners of churches, that is, "the corners of public places; that he heard there were "papers upon these places about the time, but he never "saw one."

On his cross-examination, he says, "They marched in-"stantly; there was no huzzaing by the party, only by the "children; that three had guns in the front, and there were "others with guns towards the end of the procession; that "they were about a quarter of a mile from him when he first "saw them; after they marched off, there were hedges be-"tween them, but he was higher than the hedges; that he "just saw the flag and the procession moving along; that "he could not see them so as to distinguish them. The pri-"soner looked very downcast," and most certainly the prisoner is entitled to the whole benefit of that demeanour, and to any favourable inference that you think yourselves entitled to draw; at the same time, Gentlemen, it is right for me to mention to you, in point of law, that a man may be guilty of Treason though he should go very involuntarily into it—with very considerable reluctance. For example, he may favour a cause, but think it is by no means a favourable opportunity; but since his brethren go he will not desert them; but he may go with a heavy heart, if he thinks they are going to destruction; and we have a remarkable instance of that in 1745, where that gallant man, Sir Evan Cameron, did remonstrate with the Pretender against the folly of his enterprize; but at the same time said, "If you are determined to go, I know I am going to destruction, but I will go with you;" and there cannot be the least doubt of what would be the feelings of such a man, bound in principles of honour to go, but going at an unfavourable time; and therefore, though a man goes with considerable reluctance into a treasonable enterprize, it will not relieve him from the Treason—most unquestionably not. That is a matter for him to determine in his mind; he

acts on the principles on which he thinks he ought to act in honour; and he must take the consequence of that; and it is not that he had a downcast look, and was doubtful of success, that can relieve him; it can be nothing else but that he did not go voluntarily, but was forced into it, and had no means of making his escape till you find him at the house of Thompson.

Then comes Andrew Alison. "He knows the prisoner "Wilson; his house is directly opposite to Wilson's; he "remembers, on the first Wednesday in April last, about "ten o'clock in the evening, people going in and out at "Wilson's house, and making a great noise in the street; "people speaking, and a noise about the door, like split-"ting of wood; it continued about half an hour, and then "ceased, and the people went up the street. That he "heard, about twelve, a great deal more noise opposite his "window, but only voices; that it lasted then about twenty "minutes or a quarter of an hour, and then went away "again; that it came no more that night. That he saw "Wilson the next morning looking out of his door about "a quarter past six in the morning." Now, Gentlemen, I ask you, could he not have made his escape at that moment? Who prevented him then? Who was there then to enforce the threats the woman heard against him the night before, when this man saw him standing alone at his door, at a quarter past six in the morning?—for he says, "it "was not till half an hour afterwards that he saw a man go "into his door." God forbid I should press against this man any thing more than the evidence warrants, but I think here you have decisive evidence that at that moment this man might have made his escape. At that instant no man was there to prevent it. He says, "in half an hour "he saw a man go in by the front door, and five or six by "the back-door, all armed with guns and pikes;" not one word of centinels posted here to prevent escape; "he knew "some of them, some he did not know; he knew Robin-"son, Robert Howat, Robert Hamilton, and Morrison. "That he saw people marching out of the town that morn-"ing a little after nine o'clock; that they were going along

" the Glasgow road; that there were about fourteen of " them, all armed; some had guns, and the same kind of " arms that the men had going into Wilson's house; that " he knew Robinson, Stevenson, and Watson; that Wat- " son was carrying a flag; he did not see what was on it; " that it was upon a pole; that Morrison, Russell, and " Andrew and William Steel, were there; that he saw the " prisoner marching with that party; that he appeared to " have a sword in his right hand; he was marching in the " rear."

Upon cross-examination, he says, " He carried his sword " in his hand in the way the witness describes; that he saw " just the point of it, and there appeared to be a little rust " on the top of it; that he did not see the handle, and does " not know whether there was a sheath on it or not: That " the prisoner burns wood for his fire." The prisoner is entitled to any favourable interpretation you can put upon that, and you will judge whether you can ascribe the breaking of wood to that circumstance or to any other.

Then, Gentlemen, you have the evidence of James Fallow. " He lives in Strathaven with his father; he was at " home on the Wednesday in April; he remembers being in " Pepper Row about ten or eleven o'clock on Wednesday " night with John Dicks and a radical party; they were " walking along the street, and he heard a stamping of feet " coming up the street meeting them; they stopped; his fa- " ther's house was between them; he and Dicks went in at " the outer door, and the party came to the door, and ask- " ed if there was any person in the house; he says that " some of them said that James Fallow was there; two of " them came in, one was John Walters, son-in-law to the " prisoner Wilson. Before they came to the door of his fa- " ther's house, he heard the word 'halt' given, in a firm tone, " and the party halted; he thinks that there were above " twenty of them, or about twenty; that Walters had a pike, " and they were all armed; that is, the last-mentioned party, " some with pikes and guns; the greater portion had pikes " or guns; Howat, Stevenson, Watson, and Morrison, were " of the party; when they came up to the door, the witness " and Dicks lay down at length, and Walters demanded in

"a firm tone of voice, 'Who was there?' The witness an-
"swered, 'It is I.'—'What do you want?' He said, 'It is
"you we want.'—'For what?'—'You must go with us.'—
"'I cannot go with you.'—'You must go; walk—walk
"immediately.' Then he says he stepped out to the door,
"and he was in a terror at the time, as he saw there was
"no resisting them, and a guard was placed behind him."
Gentlemen, this is a melancholy feature of this case, that persons who pretended to have such a feeling for their own rights, and such a sense of liberty, should begin by compelling others to join in treasonable purposes, and to risk their lives against their conscience. What was or could be the purpose of that, if it was not to add to their numbers? by which numbers they were to effectuate this treasonable purpose, which had been recommended to them by that proclamation. There was a guard placed behind him, that is not immaterial, it shews that these persons, when they employed force and terror, and wished to guard a man and to keep him with them, knew well where that guard should be placed, behind him, and not to leave the man, whom they were supposed to be compelling to go with them, in the rear of all, particularly when there was a crowd about the door when he went out, by which means he would be the better able to get away and escape. The witness says, "He went from
"terror; the guard placed behind him consisted of two or
"three men that he did not know at that time; some had
"pikes, and some guns; that he was marched along in the
"centre of the party; they were on the right and left, and in
"the front and rear of him; there were upwards of twenty;
"they went forward to the house of William Louden; that
"that was the next door that was taken on the way; that
"Louden's house is about twenty yards from his father's;
"they rapped at the door, and demanded admittance; Wil-
"liam opened it, and they asked for a man; he said they
"had no man but their own family, or something to that
"purpose; that they then went away; William is about
"sixty; they then went to the house of Thomas Allen
"of Flemington, about a stone's cast from Strathaven, and
"brought a gun from that house; they then went to Thomas
"Alexander's house, and knocked both at the door and

"window; the persons inside came out after the party "had uttered a considerable deal of threatening language, "threatening aloud to fire in at the window, if the door "was not opened. James Alexander, the son of Thomas, "told them to stand back, and he would hand out the gun "to them; he was at the door when he said this. The "witness then says, that he saw him deliver a gun to them, "and they took it away." Now, Gentlemen, you will consider what is the reasonable or the rational purpose that can be attributed to these men, in thus forcibly robbing people of their arms. Was it for a mere private purpose of revenge against any individual? Was it for a mere private purpose of raising their own wages, we shall say, in the town of Strathaven? Was it for the purpose of attacking any particular house in the town of Strathaven, against which they had taken any grudge, or the owner of it? or was it with a view of arming themselves, in order to assist in that great treasonable purpose which was then on foot, and under that proclamation, in which the people were called upon to take up arms? Here are the facts, and it is for you to draw the inference. Then they went to James Scott's. Now, Gentlemen, it is a material circumstance, that the woman, I forget her name, I think it is Mrs Hamilton, who swore to the conversation which she heard this prisoner have in his own house, in which a Mr or a Dr Scott's was one of the houses that he pointed out from which they would get guns. That she swears to. They would get a gun here and a gun there, but among the rest at Dr Scott's.

Mr Monteith.—That was said on the Thursday morning.

Lord President.—I shall come to that presently, and will correct myself.

Mr Murray.—One is a physician, and the other is a clergyman, I believe.

Lord President.—They then went to James Scott's house, which is nearly a quarter of a mile from Mr Alexander's, on the Glasgow road; they crossed from Mr Alexander's, which lies in the Hamilton road. He says, "That when they "got to James Scott's house, they either knocked at the "door, or the door was open, and they went in and demand-"ed John the son. He came out, and had some conversa-

" tion with them, but what, he could not say; that his mo-
" ther was making a great noise within the house, scream-
" ing and crying; that it was the noise and shouting of a
" woman, who was alarmed and in distress; they therefore
" allowed him to go back. They then went to John Col-
" lins's, a door or two from Scott's, and demanded admit-
" tance there; they knocked at the door, and asked for John
" Collins; after a considerable time they opened the door,
" and got into the house; that Collins did not go with
" them, nor what became of him he cannot tell; that he
" heard him, he thinks, say, ' I will not flinch;' that when
" they left Collins's house, the party divided; a detachment
" was sent up to High Ball-Green from the place where
" they then were, which was Lower Ball-Green; that he
" does not know who sent them, but they were told to go and
" see what they could find at High Ball-Green; that about
" ten or a dozen went away for the purpose; in about ten
" minutes they returned; he remembers their making a re-
" port, but cannot recollect what they said; they then march-
" ed to William Simmington's, rapped at the door, and ask-
" ed if William was in; that he came to the back-door, and
" answered he was; they asked if he was coming out, he
" said, Not to-night, that he would see them to-morrow morn-
" ing; he believes they used some threatening language be-
" fore that; that he believes he did not come out; they did
" not get any thing there; that they were talking about at-
" tacking Mr John Cochrane's shop; that he keeps most
" kinds of goods in the hard-ware line, and sells gunpowder,
" shot, and flints; they said they thought they could get
" about eighteen guns there; that while they were at Mr
" Simmington's door, talking about Cochrane's, he stepped
" aside; a man with a pike, and another with a gun, were
" placed over him, and stepped aside with him; the man
" with the gun was between him and the road; he gave him
" a shove, and ran off; that during the time he continued
" with them, it was from apprehension or terror."

On his cross-examination, " He cannot say exactly how
" long he continued with the party, but thinks it was about
" an hour; that when he first went out, he was amongst the
" whole party, there were a considerable number around

"him, and he was in great terror at the time; that it was "very dark when he came out about twelve o'clock; that "in guarding him afterwards there was sometimes more, "and sometimes less, but there was always some in the rear "and some in the front; that when he made his escape, it "was uncommonly dark, and a very wet night. Then he "says that he knows the prisoner; did not see him there, "but might have seen him if he had been there." So far, Gentlemen, unquestionably the prisoner Wilson is not personally implicated in this searching for arms; but, on the other hand, there cannot be the least doubt that it is the same party with whom he marched the next day, who had been thus searching for arms, and who had left his house in the evening for that very purpose, and Walters, his son-in-law, was one of the party.

Then the next witness is William Loudon. "He lives "in Strathaven; a party of armed men came to his house on "the night of the 5th of April, and knocked at the door, "and civilly asked him to open it. He said, 'Who is "there?' and they cried, 'Open.' He opened the door, and "saw a man with a gun; he came on the step of the door, "and said, 'Send out that man;' the witness replied, 'We "have no man but ourselves.' This man's name is Peter "Macallum; he came from Kilsyth; some of the rest in the "street told Macallum to come away; it was a very dark "and wet night; he could not, he said, have any idea how "many people there were, but by the clashing of feet upon "the pavement, there seemed to be a considerable number."

The next witness is James Alexander. He lives in Fleurington, near Strathaven. He says, "That he remembers a "party coming to his father's house about eleven o'clock on "a Wednesday evening, in the beginning of April last; "they came to the door, and made a great noise, and from "the door they went to the window; that by this time he had "risen. He says he asked them what they wanted; they asked a gun from him, and he said, that if they would stand "all back from the door, and not molest the house, he would "open the door, and give it them quietly; that he opened "the door, and gave it them out of his own hand; that he "looked out, and thinks there were between thirty and

" forty; when they came to his father's door they made a
" great noise, and a gun was fired just opposite the window;
" that he was then just rising out of his bed, and he saw the
" flash; that most of them had something in their hands;
" some of them had the appearance of long poles, and others
" shorter; that it was very dark, and he could not see whe-
" ther it was muskets or the points of pikes. They took the
" gun away with them, promising to return it; they passed
" the door, turned directly, and went down the road; they
" ordered him to shut the door; they did not say when they
" would return the gun, nor where, nor any thing about it."

Upon his cross-examination, he says, " He thinks the gun
" was fired about eleven o'clock."

Then comes John Cochrane the elder, a merchant in Strathaven. He says, " That he was at home on the night
" of the 5th of April last; that he was in bed, and was dis-
" turbed about a quarter before twelve o'clock, by a noise of
" people and a knocking at the door; before that, he heard
" the word 'Stop,' and he said to his wife, 'I think there
" be the radicals now.' Then they knocked at the door; he
" did not rise at first; the knocking continued more violent-
" ly; they called him by name, and threatened to break
" open the door, if he would not open it. They said they
" wanted goods out of the shop; he opened it at last, and
" they came in; he thinks he saw four of them; he had a
" candle which he took down with him into the shop; he did
" not know any of the four men, and has never seen one of
" them since; it was at the outer door they came in first; they
" then demanded access to the shop, and he admitted them;
" they asked for fire-arms, powder, and lead; they got one
" musket, which was the only one in the shop; they express-
" ed themselves disappointed at only getting one gun, as
" they expected sixteen; they got seven pounds of powder.
" He says he shewed them some small lead shot, but that was
" not what suited their purpose; he had other lead shot, but
" that was not kept in the shop, it was kept in a back court;
" they got about a dozen or fourteen flints. The value of
" the articles, he says, as he took a note of it, including the
" gun, was L.2, 7s. 6d.; that he did not give the gun, or
" other things, voluntarily; that there were from twenty to

" thirty people outside the house; those inside the house
" had no arms; but it was very dark and wet outside, and
" he could not see what the others had; they seemed to be
" carrying something; he was to put the articles down to the
" radical account, and he would be paid for them; they stay-
" ed about half an hour; he was ordered to put them down
" to the radical account." Therefore, Gentlemen, this was no private robbery; this was no private plunder of thieves. They avowed that they took these arms for the radical account, and desired him so to mark it. Now, Gentlemen, the question for you is, What was that radical account? —was it, or was it not, any object different from that which was ordered by that treasonable proclamation? Here you have a treasonable proclamation, ordering people to act. Here are people arming, not only bringing their own arms, but taking arms wherever they could get them and find them, by force, and desiring arms to be put down to the radical account. Is it possible, Gentlemen, (I am sure I hope it may be,) for you to separate the one of these purposes from the other, or to conclude that the men so arming themselves, and acquiring arms by means, whether foul or fair, were arming for any other purpose than in furtherance of that proclamation?

Then you have the evidence of John Cochrane, the younger, who says, " That he lives with his father, who is a shop-
" keeper in Strathaven, and sells all kinds of hardware; he
" recollects some people coming to his father's house about
" twelve o'clock at night, upon a Wednesday, in the begin-
" ning of April last. There were between twenty and thirty;
" they knocked at the door for some time, and then his father
" opened it, and four of them came into the shop. They
" got a gun, some gunpowder, and a dozen flints; he did
" not see them get the gun, but he saw them get the powder
" and flints, and he saw the gun in Howat's hands in the
" shop. They went away after this, and carried the gun with
" them, and he saw no more of them till next day, when he
" saw them about the Relief Church in Strathaven, about
" nine o'clock in the morning; there were about twelve or
" thirteen of them, all armed with guns and pikes; that
" they had a flag; William Watson carried the flag. He

" knew Robert Howat, the very man who took the gun, to " be of the party, and Wilson the prisoner, and Walters, " Robinson, and Stevenson; that Walters had a pike; they " went up to Ball-Green, and along the Glasgow road, and " he saw no more of them; when he saw them going in " that direction, they were not marching, not quite regular " in their manner."

Upon his cross-examination, he says, " That Ball-Green " is just at the end of the town."

Then you have the evidence of William Semple the elder. " He lives at Easter Overtown, within a quarter of a mile of " Strathaven; it is a single house; he was in bed when he " was alarmed by Mr Dicks, on the night of Wednesday " the 5th of April last; he came and knocked at the door, " in consequence of which he rose up; about half an hour " after that, an armed party came with guns; he heard the " guns, but did not see any pikes; he heard them fire off " two or three shots. That is pretty good evidence that " there were guns there. They came to the back-door first, " and then to the front-door; the house was surrounded, " and they knocked at both doors very much, and threaten- " ed to burn the house if the gun was not given up in ten " minutes; after some time he advised his son to give it up; " he did this from fear and apprehension; his son went to " the door, and he gave the people the gun, loaded with " powder and small shot. He was at Strathaven when the " prisoner was apprehended; heard the party who took his " gun say it would be better for the witness if they gained " the day, as he would get his gun again, but if they lost the " day they would lose their lives." Now, Gentlemen, whether the prisoner be or not implicated in this insurrection, is another question; but that here there was a treasonable insurrection avowed by this party, and known by this party, in its quality of Treason, to be such, is here put by this witness beyond the possibility of doubt. " It would be bet- " ter for the witness if they gained the day, as he would get " his gun again, but if they lost the day they would lose their " lives." I think it is impossible to draw any but one conclusion from this speech, that the man who uttered it (and it was uttered in the presence and hearing of them all,) knew

well that it was a treasonable purpose on which the party risked their lives.

On his cross-examination, he says, " He never looked out " till they were getting away, till his son gave them the gun; " that he heard them at both the doors knocking, and two or " three shots went off at the east end of the town; when he " saw them going away, they were going down the road to- " wards Strathaven."

Then William Semple, junior, " remembers some people " coming to his father's house between twelve and two on a " Thursday morning, in the beginning of April last; that he " was out of bed at the time; the first thing he heard was " the firing of a gun, and then a rap at the back-door; they " required arms, and ordered he should give the gun up; " he said he would not give it, and they threatened to destroy " the house if he did not deliver it, and in a quarter of an " hour he opened the door, and handed it out; it was very " dark; he only saw two, but he supposed there were more, " otherwise he would not have given up his gun." Here is what he says they said,—" if they succeeded in the case, " they would bring back the gun, and if they did not, we " could not expect them to bring it back." These are not the same words which his father swore to, nor yet so strong, but it has pretty nearly the same meaning, that if they did not succeed, they and the gun would go to wreck, and never be heard of any more. " That he saw two guns at least— " caught them in his hands, and pushed them aside. They " were presented at his body, and he pushed them aside for " fear of the consequences."

Then the next witness is Thomas Hepburn, who lives at Beadledyke, near Strathaven. He recollects, " upon a Wed- " nesday night in the beginning of April, at the time of the " Strathaven rise, some people came to his house; he was in " bed at the time; they came opposite his house, and knock- " ed at the door; they wanted a gun; they fired when they " came to the house; the gun was in the kitchen; he rose " from the place where he was lying; they continued rap- " ping, but he never spoke to them, and they went away; he " knows Wilson, the prisoner at the bar; he saw him the

" next day about seven in the evening, on the Hamilton road, " going towards Strathaven. Wilson asked whether he had " suffered from the radicals? he answered, Do you not know " any thing about them? Did you not go away with them " this morning? Wilson said he had convoyed them to Kil- " bride; he asked, Did you not go with them with a drawn " sword? his answer was, they had come into his house, and " bought an old sword from him; and as he was going that " way at any rate, he had just gone with them." Now, Gentlemen, if this witness is not perjured beyond the hopes of redemption, here is evidence directly contradicting the whole story of force and terror. Here you have the prisoner giving his own account of the matter, not before a magistrate; no compulsion; neither threats, nor expectations, nor rewards, nor any thing else held out to him. Here is the account he voluntarily gives of this business, when he comes fresh from it. " Did you suffer from the radicals?" " Why," says the man, " do not you know yourself—did you not go away with them this morning?" He said, " He had convoyed them to Kilbride." Now, Gentlemen, put it to yourselves—search your own hearts—every one of you put the question to yourselves—what would you have said and done if at that moment you had escaped from such an abominable outrage on your person from men who had forced you to go eight miles? What would not have been the ebullition of your joy at that moment? Would it not have burst from you? " Yes, I know it; I was with the radicals, and here I am, thank God; I have made my escape from them." I cannot —I wish I could—put the interpretation upon it that he was under fear, or agitation; for it is his own voluntary deliberate account, that he had convoyed them to Kilbride; that they had come in and bought a sword from him, and as he was going to Kilbride at any rate, he had gone with them. " Wilson said, that they had met some person who said all " was peace at Glasgow, and he (Wilson) advised them to " turn. Nothing farther passed. Wilson went away to his " house, and the witness went home." Now, Gentlemen, that may well accord with the feeling he had of disappointment at their number. He might be afraid—he might feel that he must go with them, but be afraid that they were pre-

mature. "The people of Strathaven have not risen as we expected and hoped, and, perhaps, it may be the same at Glasgow;" and, therefore, supposing this to be evidence, (it is only his account of the matter); but supposing it is true, it is natural to suppose he would go; but finding there was no chance of success, he said, "We had better return again;" but that he went freely and voluntarily, you have from his confession to this man.

Upon his cross-examination, he says, "Wilson told him "that he had asked some people on the road what was go-"ing on, who replied, nothing but peace at Glasgow; and "then he always advised them to turn all ways from the in-"formation he got. That he was a hosier, and was only go-"ing to a hosier at Kilbride; that, in short, the party asked "every person they met on the road, what was doing at "Glasgow, and they said, there was nothing but peace, and "then he advised them to return; and of course, finding "that their enterprize was desperate at Kilbride, they dis-"persed, and each man made the best attempt he could for "his safety."

Then you have the evidence of Jean Hamilton. "She "states that she knows the prisoner. That last April she "lived within a quarter of a mile of him; that she was in his "house on the 6th of April, between eight and nine o'clock; "that the prisoner and ten or a dozen others were in the kit-"chen, sitting on the floor, looking about them—there were "some guns and some pikes standing by the side of the wall, "but she does not know how many. They were looking at "them and making a complaint that they had bad arms, and "James Wilson said they would get a gun or two at Dr "Scott's, and one or two at Hamilton's at Parkhead, and one "at the Three Stones, and one at Gavin Semple's at the "Ewk—that it was on the road, and they would get them as "they went past. She does not know who made the complaint "about the arms, they were strangers to her. She asked Wil-"son if he was going with them to-day; he said, 'Yes, yes.' "That at that time he was filing something at a bench about "the size of a penny piece—it was black. She knows the "road from Strathaven to Glasgow; the houses she has men-"tioned, are not on the road straight, but a little bit off of it."

"Then she says she saw a flag in the house, with 'Stratha-
"ven Union Society' upon one side of it; she did not see the
"other side, it was standing against the wall, no person had
"hold of it. Wilson, she says, sometimes comes to her
"house; he was in her house on the Monday before. Mar-
"garet Young was there and the witness's brother. Margaret
"Young asked Wilson what he, that was an old reformer,
"thought of this reform; and he said he hoped they would
"win it. The witness said, you are leading away all these
"people to be killed; he said they could not die in a better
"cause; the witness said, if they are not killed, they will be
"driven from their own places and never come back again.
"Wilson said there was no fear of them; they had the most
"number, and they were seeking the rights of their fore-
"fathers, and he hoped they would get them. The witness
"referred him then to some event in the history of Israel,
"saying, if they looked back to the Old Testament, they
"would find that the greatest number did not always win.
"After that he left the house, and she saw him no more till
"the Thursday morning. She had not seen him before for
"some time; she only saw him in the presence of her bro-
"ther those two times; her brother was in Wilson's house
"on Thursday morning, and she went there and insisted
"over and over again on his coming away, but she could
"not prevail on her brother to come away." Now, Gentlemen, you observe this witness does not give evidence to soften matters with respect to her brother in the smallest degree, for she says she did all she could to prevail on her brother not to go with them, and she could not. Therefore, this woman did not give her evidence, as it was supposed, to screen her brother, for she says that her brother persisted in remaining, and did go out with them; and then she details the conversation relating to what this man said, and of which, unless you suppose her completely perjured, the plain meaning is, that he knew there was this reform going on—and it is for you to say, whether it was the reform urged by that proclamation; and he said he hoped they would win, and that they could not die in a better cause.

On her cross-examination she said, "that Gavin Semple's

"might be a mile off the road; she is not sure that it is not "two miles. Parkhead is not a mile."

Then you have Gavin Cooper. Gavin Cooper lives within a mile of Strathaven, at a place called Coldstream.

Mr Murray.—She said the Ewk was not on the road at all.

Lord President.—It was a mile or two off the road.

Mr Murray.—And that it was not on the road at all.

Lord President.—It could not be on the road at all if it was a mile or two off. "Then he says, that on Thursday "the 6th of April, Captain Craufurd sent his servant over "to tell him there were some people coming armed to his "house that morning; that he was in bed at the time; that "a party did come, and about four came in—the house is "about sixty yards off the road—this happened about nine "o'clock in the morning—they urged a gun, and he refused "to give it to them; they threatened him several times, and "upon his still refusing to give it to them, they presented "four guns at him and threatened to blow his brains out, "and then left him. That he did not see any more than "those four in the house, but outside there were a great many "boys, and men with guns and pikes—he saw them march "off; they turned back to the Glasgow road and went on to-"wards Glasgow—he could not name any of those in the "house, and only one, (John Morrison,) on the outside. He "did not see the prisoner there;" but then you have it from a variety of other witnesses, that the prisoner had marched with the party, and not the smallest evidence that he had quitted them for one moment.

Then you have Christian Young. "He is a servant in "the family of Gavin Cooper, and was so in April last—he "says that he recollects, in the beginning of April, a num-"ber of people coming to the house about nine o'clock in "the morning; they came into the house and demanded arms. "They saw my master and demanded his gun; they threat-"ened to blow his brains out, if he did not give them arms; "there were about six people in the house all armed with "guns—a good many on the outside, some armed with pikes, "and some with muskets. That among them there were "Stevenson, William Robertson, and William Howat—that "Stevenson and Robertson were among those that threaten-

"ed his master; that they then went away towards the "Glasgow turnpike road, and turned towards Glasgow."

Then you have John Grierson, who lives at Strathaven. "That he knows William Watson, saw him one morning in "the beginning of April last carrying a flag; that it was the "first Thursday in April; that there were about a dozen or "thirteen people with him walking along the Glasgow road, "he was nearly about the centre of them, some had guns "and some had pikes. Robert Hamilton, that is the bro-"ther of the witness Jean Hamilton, and John Stevenson, "were carrying guns; he does not recollect any more; he "saw the prisoner; he had a sword on his right side; his arm "was stretched down on his right side, apparently support-"ing the sword; they went towards Glasgow along the pub-"lic road; there was no sheath on the sword; he saw John "Walters among them, carrying a pike."

Then William Barrlie says, "He lives in Strathaven. In "the beginning of April he saw the party march out, it was "on a Thursday morning—he saw them before they went "forward to the Ball-Green toll, which is on the Glasgow "road, about two hundred yards from Strathaven; there "were about thirteen of them, some armed with guns and "pikes, and William Watson carrying a flag; to the best of "his recollection they were divided into four different ranks; "they were walking at an ordinary pace; he does not mean "ordinary military time, but walking at an ordinary pace; "they made a halt at the Ball-Green toll, but he does not "know for what purpose; there were among them besides "Watson, two persons of the name of Steele, Wilson the "prisoner, Hamilton, Robinson, and Howat, and also a "person of the name of James Donald, but he was only "looking on—the prisoner was about the rear.

On his cross-examination, he says, "Wilson appeared to be "rather awkward, bashful-looking—the others appeared in "good spirits;" and to that, Gentlemen, you will apply the observation I made before, and consider from what that can arise, whether from the disappointment at the number being so small, or the terror and compulsion. "Wilson was ap-"prehended before the witness came up—Wilson said that he

"had gone out rather against his will; that he had a sword and "had sold it—he cannot say positively that he said he was for-"ced out, but something like it." Indeed, when he said he went against his will, it was something like it, but the witness would not say that he said that he was actually forced out, but something like it. Now, Gentlemen, this is the only evidence you have of the prisoner pretending any force was used, that to this man he said he went out rather against his will; that this witness cannot say he said he was forced out, but something like it.

One of the Jury.—He said he had sold the sword.

Lord President.—But then he had another one, because that he carried a sword all the witnesses agree.

Then you have John Hamilton. "He recollects a party of "people marching out of Strathaven on Thursday the 6th of "April last—they had a flag with an inscription upon it, "'Scotland free or a desert.' He lives nearly opposite to "Wilson's; he saw a great many people going out of Wilson's "house the night before, about eleven. When the party went "off, saw Wilson come out and go into Matthew Rownie's "house; he heard Rownie inform him, that he was going to "Glasgow directly, and Wilson said, 'Very well, you will in-"form them that we shall be down to-morrow morning by break of day.'" Now, Gentlemen, this witness is certainly not corroborated by Rownie, except so far that Rownie swears he heard his wife conversing with this man about his going to Glasgow, so that there was a conversation about going to Glasgow. Hamilton says, "it was Matthew Rownie himself; "Rownie says he had no conversation with the prisoner that "night in his house, but he heard his wife saying something "about a person's having asked about his going to Glas-"gow; then Hamilton says, he heard a great deal of noise "in Wilson's house that night like chapping with a ham-"mer, and people talking—this was between ten and eleven "o'clock at night; that he saw them go off that night, but "could not see the number; they went regularly off; a man "had come out, and called 'file off,' and then they went off; "the next morning there were fourteen; the prisoner was "with them; he had a sword in his right hand—thinks it

" was sheathed. He saw Rowney at Penny's house that night, " but is not sure whether he saw him come out before Wil- " son went into his house. Then he says Rownie was at " his own house at the time the conversation took place, so " that he must have come out of Penny's before them."

On his cross-examination, he says, " That the conversation " between the prisoner and Rownie took place between eleven " and twelve o'clock at night; that it was very dark, and a lit- " tle rainy; that he was standing in the entry just at the door " facing Wilson's, and Rownie's was on the right hand." Now, there is one observation which this suggests to me at all events; that at least between eleven and twelve o'clock, this man has actually made his escape from that scene of terror, blood, and slaughter, and threatenings, and burnings, which that woman swore to—he has made his escape; he is without his house; could not he have gone to Dr Scott, or gone to Glasgow, or hid himself in any house, or in the fields, dark as the night was, rather than be compelled into a purpose to the risk of his life? Rownie admits he was at Rownie's house, for he tells you he conversed with his wife upon the subject. Rownie said he was going directly to Glasgow; I do not know whether he went or not—it is sixteen miles to Glasgow. The witness states that he saw Rownie the next day between eight and nine o'clock in the morning; he did not ask him if he had gone to Glasgow, or have any conversation with him. Rownie spoke quite distinctly, and he heard the whole very distinctly. Then there was a question by the Court—" cannot say whether the night party made part of " the morning's party or not." Gentlemen, whether Rownie did or did not go to Glasgow, depends on his own evidence —he swears he did not, and perhaps he might have intended to go to Glasgow, and say that he intended to go that night, but did not go, and as he was seen at nine in the morning, I think the probability is he did not go.

Then you have Agnes Richmond. " She is the wife of Ro- " bert Hamilton, a change-keeper at Kilbride—that is a diffe- " rent Robert Hamilton from the one who went with the " people. A party consisting of three people came to her " house in the beginning of April, upon a Thursday, armed

" with pikes; they remained about five minutes; she knew
" none of them; she saw John Walters go past the house in
" the course of the day, perhaps about eleven o'clock in the
" forenoon; there were others with him; they were all arm-
" ed with guns and pikes. The three men came to her
" house in the forenoon—they paid the reckoning themselves;
" she did not know any of those that went by except Walters."

Upon her cross-examination, she says, " She thinks her
" husband was not with her at the time the people came;
" but she believes he was about the house, and not far off;
" they were there only about five minutes; they paid for what
" they had, and went off. She believes they never sat down."

Then you have Elizabeth Millar, who lives in Kilbride.
" She remembers one day, in the beginning of April last,
" seeing some people march through Kilbride; it was on a
" Thursday; they were going towards Glasgow; she only
" knew one by sight—that was Howat; they had some kind
" of arms with them, but she does not know what they were."

Upon her cross-examination, she says, " She has seen the
" prisoner at the bar, and knows him by sight, but she did
" not see him among them."

Then you have John Thompson, " who lives at the Com-
" mon Brae of Kilbride. He is a hosier there. On the 6th
" of April last, he saw some persons marching by his house
" —about twenty, all armed with guns and pikes; they were
" marching in line—the pikemen considerably before the gun-
" men; the gunmen were in a line; after they were past, the
" prisoner Wilson, he says, came into his house, and asked
" for a pipe and tobacco, and some time after he made some
" tea for him; the prisoner asked about the stocking weaving,
" and frames, and so on; and he recollects he asked the pri-
" soner particularly about stocking pieces in the loom; there
" was very little said about the party that were passing; the
" witness asked him if any one of William Fleming's sons
" were there, he said none; he does not recollect any thing
" more passing; he never signified to the witness that he be-
" longed to them. He then says, that Fleming lives in Kil-
" bride, and he was afraid his sons might be among them,
" and he asked the prisoner about them, because he thought

"he must know; the reason that the witness asked was, "that as the prisoner had just come in after the party had "passed, he thought he must know; his daughter got some "tea ready, and the prisoner took it, and went away up the "road, and he went up the road nearly a mile with him; "they had no conversation but about William Fleming's "sons; they met one of them afterwards coming towards "Kilbride with a party, but he did not know any of the "rest. He was coming to Kilbride to see his father; does "not know what brought the prisoner to his house, but when "he was going away to the door, he said, 'If you should "be called to account, you can witness that I came here on "business.' The witness said, 'I can witness you were here.'" Now, here is a thing again for your consideration in your own minds—this man, after being marched eight miles in this degrading and slavish manner by people who had used him so infamously the night before with all kinds of threats, and force, and terror, who threatened, by our Saviour, to blow his brains out, if he did not go with them, at that moment makes his escape from them. What would any one of you do under such circumstances? What would any man, possessed of the common feelings of human nature, have done when he came into the house of a friend, but explain to this man Thompson, when he asked, "were Fleming's sons there?"—"No; and thank God I am not there; I was for-"ced with them, but have made my escape." It would have been a strong circumstance if these had been his first words. I cannot conceive it possible, that any human being, so placed, having escaped such a great evil as that—such a serious danger, so distressing to a man of common spirit, should come in, and quietly sit down, and ask for a pipe to smoke, or things of that kind, and then when he is putting this man on his guard as to what he should say of him, that he had come there on business, the man gives that answer, "I can witness you were here;" but he did not say yesterday that he was there upon *business*.

He says, on his cross-examination, "that his daughter was "there part of the time—she was not in the whole time that "the prisoner was in the house; nor he either, for he went

"to the town for a quantity of tea; his daughter returned "before he went away; it was about mid-day when Wil- "son came to his house; that his daughter went about a "quarter of a mile for the bread, and was there during the "remainder of the time the prisoner was in the house."

You have next the evidence of Isobel Thompson, the daughter of this witness. "She remembers the week the radicals "were in their town; she saw three before she saw Wilson "come into her father's house; they had spears with them; "Wilson came in alone, and they passed through Kilbride "towards Glasgow; Wilson asked her if her father was in, "and she said, No; she then went out, and when she came "in again he was smoking. She does not know what they "were speaking about; he did not say what brought him "there."

On her cross-examination, she says, "The prisoner, James "Wilson, was behind the party when she saw him; that "she was then standing at her father's door." Now, Gentlemen, what reason was there why it should be more safe for him to leave the party at that moment, when he was in the rear of them, than when he first set out—he got away the moment he attempted—he left them when he chose, and nobody molested him; then she says, "That he did not come "down the straight road, but the side road; she saw him "leave the party with something, and he came to their "house."

Then you have Robert Steele. "He lives at Strathaven. "He says he is in the habit of visiting the prisoner at his "house; that a party met there to read the newspapers once "a-week; Wilson was sometimes there, and sometimes one "read, and sometimes another. The papers read were the "Manchester Observer, and the Spirit of the Union." As to this Manchester Observer, and the Spirit of the Union, I know nothing, and you are to know nothing; they were not proved to you; there was not a single paper put in evidence.

Mr Murray.—It is not that he gave up going there, but that they ceased to meet.

Lord President.—I have not come to that. That the

Spirit of the Union was not read in the house, but went through amongst them; that his house was taken in order; that he ceased to meet in January, but cannot be positive to the date.

Mr Murray.—My note is, that the persons ceased to meet in January last.

Lord President.—It may be so; I thought it applied only to the witness.—" That he saw them march out on the 5th, " in the morning; that he was about 150 or 200 yards from " them; that he was not near enough to recognize any of " the persons there, except two or three, who were detached " from them off the side of the road: that he knows William Robertson: that he called on the witness on the " evening of the 5th, and told him there was news from " Glasgow, and that there was a meeting intended, but who " brought the news, or what it was, he did not ask him; " some people came forward and interrupted them, and " then they parted. The night was very wet. After that " he went to the prisoner's house; he was not, he believes, " a minute in the house; he did not see Wilson there; there " were only one or two there that he knew; there were " John Stevenson and William Robertson there; he cannot say who besides; he cannot precisely say the number, " but there might be from a dozen to twenty. This was " about ten or eleven. Stevenson asked him (that was after " he was in Wilson's house) if he had heard the great " news, and he replied he had heard some rumours; he " asked what the rumours were, and Stevenson repeated " them. He said that the radicals in Glasgow were up, " and it was time that any persons who were of that opinion " should join them. He said he hoped the witness would " join them; he answered that he would think of it. That " he then left the house directly. He saw them march out " the next day. Wilson was not close to the body. That " he was not near enough to distinguish any of the persons, but he knew it was the party by their marching and " carrying a flag. That he was near enough to distinguish " Wilson, who was two or three yards in the rear of them; " this, of course, Gentlemen, rendering it infinitely more

easy for the prisoner to have made his escape among the crowd, and so have detached himself from the party. "Had "some conversation with the prisoner in his own house be- "fore the party set off in the morning. He asked the pri- "soner what was the news of the morning; he replied "there was little; that there had been a confused night. "The prisoner said he heard that a party had marched to "Glasgow; witness said that he had heard so too." Therefore that is another party they must have been talking about, because this was before the prisoner marched. "Does not "recollect any thing else: That this might be an hour, or "an hour and a half before the party marched with the flag: "That he did not see the prisoner in his own house at any "time the night before. Then he is asked, whether the "persons had any arms with them that night, and he says "he saw no arms, except that Stevenson had a pike in "his hand. When he left the house he went to his fa- "ther's, and staid a quarter of an hour, and then went "home and went to bed."

Andrew Shearer says, "that he has known the prisoner "almost as long as he can remember; that he belonged to "the Union Club or Class with him: that he never knew "of any colours belonging to that Club; he never saw a "Union flag, or heard of it till this morning: that there "was no president of the Club; they elected the prisoner "class-leader the first month, and they never elected any "more; he does not know whether his election was con- "tinued, or whether he continued to act upon that former "election. They met in the prisoner's house once a-week. "On Monday night, after the post came, they met to read "the Manchester Observer; the Spirit of the Union, and "the Black Book, were also circulated among them. There "were between sixteen and twenty of them belonging to "the Club; there were Robert Steel, the prisoner, the wit- "ness, and John Hind, in it. They put up advertisements "in his town on the sides and gable-ends of houses. He "saw an Address against a wall, and another on Moor's "house." There you have complete evidence of more than one copy of that Address having been in the town of Strath-

" Ritchie, Hind, Thompson, Cunningham, Scott, and So-
" merville. He does not recollect any others, but he thinks
" there were more. The meeting ceased between the 10th
" and 20th of January."

And then, Gentlemen, you have the evidence of Mr Hardie, a Justice of the Peace of this town, " who saw the Ad-
" dress posted up here in good numbers in the town and
" neighbourhood. He took down one, and attempted to take
" down another. It was an Address which caused the peo-
" ple in general to turn out from their work altogether, and
" go about the streets in a tumultuous manner. That there
" were several parties marching and keeping step, four a-
" breast. He saw three or four parties on Monday the 3d of
" April. There was considerable alarm excited amongst the
" inhabitants, and the magistrates issued a proclamation,
" directing all well-disposed persons to be in their houses by
" six o'clock in the evening, and that the shops would be shut
" at six. The shops were generally shut at six, but on Wed-
" nesday, he says, the consternation was so great, that they
" were shut by three o'clock throughout the town, in conse-
" quence of reports from various quarters that the radicals
" were marching against the town in great numbers. That
" additional constables were sworn in, and troops were brought
" in. That he saw about a hundred of these Addresses post-
" ed in the Bridgetown of Glasgow. Had himself great ap-
" prehensions for the safety of the town."

Then you have John Steel, " who lives at Strathaven.
" He recollects a proclamation making its appearance there
" on Sunday the 2d of April; he saw it at the Town-end,
" in a man's hand, and heard it read, but he cannot recol-
" lect any of the contents of it. It was an Address to the
" people, and appeared to be issued by some committee.
" He did not give over work in consequence. He went to
" work on the Monday morning between five and six, and
" continued to work till between seven and eight in the
" morning; so that he did not work very long. He did
" not stop on account of the Address. He worked no more
" that day, as far as he recollects. He says, there was a lad
" came into the shop and told him the rest of the shop were
" not working, because the proclamation ordered them to

"stop, and the rest had stopped, and so he stopped, although "he told you he did not stop on that account. He says "there was a difference in the state of working among the "people after the Address appeared; that they seemed to "have relaxed. He saw an Address afterwards posted up, "which appeared to be the same Address, but he did not "read it."

On his cross-examination, "He says he saw the prisoner "on the Wednesday. He thinks he was at his work as or-"dinary, but he cannot say; he was standing at his bench "as usual." Then the Address is read—the Address sworn to by Mr Hardie—the same as in the indictment.

Then comes Archibald Brownlee, a clock-maker, who is occasionally employed in making stockings. "He knows "the prisoner, and has occasionally worked at his house. "He remembers the time of the people marching from "Strathaven towards Glasgow in April last, but did not "see them march out. He saw an Address posted against "the walls of Strathaven upon the Sunday before they took "arms; he saw two or three, at different parts of the town. "He read one of them. He does not remember the language "of it, but should know it if he saw it. Then an Address "is shewn to him, and he says he thinks it is the same. He "thinks the Address which he saw against the walls at Strath-"aven began in the same way, but he paid very little atten-"tion to it. He was at Wilson's on the Wednesday before "they took up arms, and he saw a great number of people "going in and coming out, but that was usual. Wilson had "a vice, and he soldered white-iron and tin, and things of "that sort. He had an old sword, which he cut in two, and "sharpened the point of one of the ends. That was an ex-"traordinary operation—never saw it before. Overheard "some person bring a message, and heard Wilson say it "was a wet night, he could not go. The message was, that "he was to go somewhere up the town to see some person. "He knows William Allan of Ball-Green; there was some-"thing said about him, but he cannot say what. This per-"son was at Rownie's that night, and had that opportunity "of making his escape."

Then, Gentlemen, comes the exculpatory proof, and the first is the evidence of Jean Semple, the wife of John Hamilton. " She knows Prior-Hill, three or four miles from " Strathaven, on the south side. She remembers going, on " the 1st of April last, from Strathaven to Prior-Hill. She " left Strathaven about twelve o'clock: saw the prisoner on " the road a mile out of the town; she walked with him to " Prior-Hill; he went into Mr Hamilton's, and remained " there about half an hour; she saw him afterwards that " day at her brother, James Semple's; it was at the gloam- " ing, that is, the twilight: that he took his tea there, and " left it about eight o'clock: That she knows Three-Stones, " which is about three miles on the other side of Strathaven " from Prior-Hill." Now, Gentlemen, the meeting at Three-Stones is sworn to have been, I think, between eight and ten o'clock at night; and therefore, if he was at this house at eight o'clock, he could not be five miles off, unless the meeting was at the extremity of the time, because he must have been an hour or an hour and a half in going there, and therefore it is not probable he could be there till near ten o'clock; but no witness swears he was there.

Then you have the evidence of Matthew Rownie. " He " lives in Strathaven; he knows the prisoner at the bar; he " remembers the day on which an armed party was said to " march from Strathaven; he remembers the night before " the party went; it was a Wednesday night; he had no " conversation that night with Wilson in his own house re- " specting going to Glasgow; he positively contradicts the " other witness, who says he heard the prisoner talking with " Rownie: he went to Wilson's house upon the following " morning; there were a few people in the house at the " time: he went forward to the door; there are two doors, " and he opened the outer door: he had his hand on the " latch of the inner door, and he heard a man swearing, and " saying, Let no man go out or in that day. Wilson sat " down by the door, and said, 'I am not well to-day.' The " man said, 'Wilson, no excuses will do to-day; for if you " do not rise and come along with us, I will blow your " brains out, by our Saviour!' The man had a gun in his

"hand at the time. After that, he returned home. In a few "minutes he heard that an armed party had marched out; "he made haste after them, and overtook them just out of "the town, about a quarter of a mile from Wilson's house. "He saw Wilson, and said to him, 'Jem, this is a bad job "you have in hand to-day.' He replied, 'Yes, I know it "is, but I cannot help it now; as soon as I can, I will make "my escape.'"

On his cross-examination, "He says he has known Wil-"son from ten to twelve years: visited him almost every "day: he never saw a meeting in his house, nor knew of "any: he was there on the Wednesday night, about six or "seven o'clock; there were no men of the radical kind there. "After the Address on the Monday, there was a conversa-"tion at Strathaven about leaving off work. He did not "give up work amongst the rest: he is a hawker, and sells "soft goods: he does not know that the weavers all struck. "He heard many inquiries going as he went through the "town. The people appeared to him to be working on the "Monday, Tuesday, and Wednesday, as usual, except that "they might not be working in some shops. He had no con-"versation with Wilson the night before. He was up stairs "with James Penny when Wilson came into his house; he "heard him speak, and knew his voice; this was between "ten and eleven. In hawking, he sometimes goes as far as "Glasgow; he goes there to buy his goods: he went to "Wilson's house on Thursday morning; there were be-"tween half a dozen and a dozen people there. He did not "see the party go out of Wilson's house; but being told "there was a party marching out of the town, he followed "after. Wilson was rather behind the rest. When the wit-"ness got up, Wilson had something in his hand, he could "not tell what—they were marching fast. The witness went "with them ten or twenty falls, which is about two hundred "yards, and then returned. He saw the party march for-"ward; Wilson did not return with him; never saw the "Address; never saw a paper on the wall at Strathaven, or "any where else; nor ever heard of it. There was a man

"spoke to Wilson at his door, but he did not know his "voice."

Then you have a question by the Court, "Whether he "was so near as to hear what passed between that man and "Wilson? and he said, Yes, he was. Wilson was speaking "to his (the witness's) wife, and not to a man, who said that "he came to ask if Rownie was going to Glasgow that day. "The witness's wife told him that Wilson had come to ask "if he was going to Glasgow that day;" the very thing that the other witness swears he heard him ask, although he thought it was the witness Rownie himself. "He did not "know the voice of the man in Wilson's house that threaten-"ed to blow his brains out; that was the only thing he "heard, and when he heard that, he turned back."

Then you have the witness Elizabeth Barr; and if you could take down her evidence, it was more than I could do. But the general import of her evidence was clear to the general violence, and terror, and threats used; and she was afraid her house would be burnt over her head, and declared that every species of violence and terror was used. But although this was true, you see, by the preceding witness, he was proved to leave his house the night before, and go to Rownie, in the midst of all this terror and threats. She says, "Wilson went to bed in the midst of all this bustle and con-"fusion;" she does not say that he left the house at all, but that he went to bed; but she might be mistaken in that. That is the import of her evidence, as strong as it is possible to make it, and you will judge of the degree of credit due to it. She is not corroborated by the person who might have corroborated her. There was her husband in the house, who might have heard all this noise, and to whom she swears she communicated her fears. Now both of them certainly, from their relation to the prisoner, stand in suspicious circumstances. But, most unquestionably, you must feel it is rather odd that this allegation of the force and fear should be attempted to be proved by the most exceptionable of the two witnesses; for his sister by blood is more objectionable than her husband; and if the wife spoke the truth, one would have thought they would have called him to confirm her.

No such thing takes place, and this woman stands alone as to that danger of violence, and still more as to the fact that the house was watched and guarded all round in the manner she states. Then she says, "She was thrown into a fever by "all this turmoil; that the threatenings began between nine "and ten, before the prisoner went to Rownie's house;" so that he had an opportunity to escape, if he wished. He spoke to Rownie, and did not mention them, but voluntarily returned to this scene again. Then she says, "They were "disputing about their commissions; that after this, James "Wilson went to bed about ten o'clock," at the very time he was at Rownie's; she never heard him up again. "When "the men came in at the back door, she ran out to her "daughter's, two doors off, and remained there till they "were all gone. They were watching round the house all "night."

Adam Hamilton lives at Whitshaw——

Mr Murray.—She did not say that she heard people watching, my Lord, but that she heard steps, from which she drew the inference that they were watching.

Lord President.—She said she heard them all round the house, but she described them as guards.

Mr Murray.—It is her inference.

Lord President.—It could be nothing else, as she was in bed. Adam Hamilton "Lives at Whitshaw, in the neigh-"bourhood of Strathaven. He knows the prisoner Wilson. "He has been for a long time in the habit of repairing guns "and pistols for the country people. He said he had a gun, "and told you that the prisoner did repair it in spring last. "In the month of April, he remembers an armed party be-"ing said to go from Strathaven; it was before that he "gave him the gun to repair, but how long he cannot say; "it might be a fortnight; he called for it again three or "four days before the radicals rose; he offered to let him "keep it for two days, to shoot the hares that came in his "garden, but he refused to keep it; he gave it back, and he "paid him a shilling for repairing it." Now, most unquestionably, the prisoner is entitled to all the benefit of this evidence, as far as it goes. That he might have increased

his force, by retaining this gun, there can be no doubt of; but it was three or four days before the morning, and they might not have been informed that Glasgow was up. So that it is not conclusive that he would have parted with the gun, if he had known the insurrection was nearer at hand; but it shews he was not retaining arms which he might have retained, if he had thought proper.

Then James Park is called. "He lives at Strathaven. "He knows the prisoner Wilson, and knows that he some-"times repairs arms for the country people, and acts as a sort "of tinsmith. Rather before harvest last, he gave him a pis-"tol, that was in tolerably good repair before that; it could "have been repaired in ten or fifteen minutes; he saw that "pistol at Wilson's house, about two hours after the party "had left it." And there, Gentlemen, certainly, is another instance. To this Park there was no cross-question put, but there is no reason not to believe him.

I have now, Gentlemen, gone through the evidence as distinctly as my notes have enabled me to do. I have detained you much too long, considering you had all that evidence in detail before you, but it was my duty to bring you back to the exact evidence of the case,—it is the evidence that you are to judge by, and by that evidence alone. I have made some remarks and comments upon the evidence as I went along, but you are to pay no more attention to them than as they accord with your own conviction, and with the inferences you would draw yourselves; if you think I have drawn any improper inference from the evidence, I desire you will pay no kind of regard to it. I have drawn my inferences, and you will judge of them. I have drawn them as I always do, and always have done, when I sat in that chair which is occupied by my brother. When at the head of the Criminal Court, I always thought it my duty to let the jury know what my opinion was, knowing I spoke to firm, honourable men, who would pay no more regard to my opinion, than as it accorded with their own, and knowing too well the independence of a Scots jury to believe they would be influenced by any thing I could say, if it did not accord with their own sentiments; but as juries are taken from the common walks of

life, not much accustomed to draw an inference from evidence, I thought it necessary to let them know my opinion, because, if they felt in their minds a conviction against the prisoner, it would be a consolation to them, in the discharge of their duty, to find they did not take the responsibility of the verdict upon themselves alone; but after all, it is your opinion, (I tell you again distinctly and clearly,) upon the evidence, that is to govern this case, and not mine; you are to determine according to your opinion of the evidence; according as the evidence stands before you, and the inferences you draw from it, and not according to my inferences; and as you will draw that inference which your own sound judgment dictates, your verdict will be satisfactory to the Court, because the Court will be convinced it is an honest verdict on your part, although it should be a mistaken one.

The charges in this indictment are four—there are four counts in it: one is compassing and imagining the death of the king under the statute of Edward the Third; the other is compassing, imagining, inventing, devising, and intending to deprive and depose the King of and from the style, honour, and kingly name of the imperial crown of this realm, being under the statute of the 36th George III.; but it does not appear to me that these counts of the indictment are the ones to which you are to direct your attention; if there is any thing in this case, it is embraced under the other counts of levying war against the King, under the statute of Edward III., and of compassing, imagining, inventing, devising, and intending to levy war against the King within his realm, in order, by force and constraint, to compel him to change his measures and counsels—accompanied by such overt acts as appear to you to be proved,—these are the two charges you have to consider.

I have only further to add, what you all know, I suppose, that you must be all agreed upon your verdict, and that verdict must be returned *viva voce* by your foreman; but at the same time, the foreman is at liberty to jot it down in the presence of the Jury for his own direction, but it must be given to the Court verbally, unless it is a special verdict, and then it is taken down in writing. Gentlemen, you will

either confer in your box, or retire, as you think proper, and the Court wait till you return.

The Jury withdrew at seven o'clock, and returned in two hours.

Foreman of the Jury.—We find the prisoner, James Wilson, guilty on the fourth count of the indictment, but recommend him to the clemency of the Crown.

Lord President.—Gentlemen of the Jury, you have properly recommended the prisoner to the clemency of the crown; because in a case of this nature there is no discretion on the part of the Court. The only punishment we can inflict, is that of the law; but the Court will take care that your recommendation is transmitted to the proper quarter.

Gentlemen of the Jury, after the very fatiguing service you have had, it was the wish of the Court to discharge you altogether; but there are more trials, and it is a possible case that it may come round to some of you to attend again; therefore you will be here on Monday morning.

Foreman of the Jury.—I shall be happy to attend; but two or three jurymen come from a distance in the country, if you will extend your indulgence to them.

Mr Smith.—My Lord, I left my house on fire and smoking, and my wife and family of six children were in a different house.

Lord President.—Sir, I am sorry we did not know that before,—you should certainly have been excused.

Andrew Smith, Thomas Somerville, John Lochhead, James Gilchrist, Dr James Howison, Robert Grandberry Baillie, and George Rowan, were excused from further attendance on the Petit Jury.

GLASGOW.

Monday, 24th July, 1820.

PRESENT,

The LORD PRESIDENT,
T LORD JUSTICE CLERK,
The LORD CHIEF BARON SHEPHERD.
The LORD PITMILLY.

WILLIAM M'INTYRE *was set to the Bar.*

The following Jury were sworn:—

CHARLES STIRLING,	CHARLES MACKINTOSH,
JAMES FARIE,	HENRY HOULDSWORTH,
DAVID KERR,	ARCHIBALD HAMILTON, jun.
WILLIAM BOGLE,	JOSHUA SENIOR,
ROBERT GRAY,	JOHN GEDDES,
MUNGO N. CAMPBELL,	THOMAS MUIR.

Lord Advocate.—May it please your Lordship—Gentlemen of the Jury—I have now to state to you, what I am confident will prove an acceptable communication, namely, that is not my intention to offer any evidence in support of the charges against this individual now at your bar; but to give him the advantage of an acquittal at your hands.

Gentlemen, it has been a rule, which those conducting these prosecutions have laid down as guiding their conduct, to bring forward to trial such persons only as appeared to them to be the leaders, or who had taken an active part in

those events, which have occasioned the sitting of the present Commission; and as it appeared from the proceedings in the course of the trial which occurred two days ago, that the conduct of this individual had not formed a very conspicuous part in the insurrection at Strathaven, we have agreed in opinion that he is not a person against whom farther proceedings are necessary. Various other individuals were condescended upon, who took a most active part in that affair—against them true bills have been found, but they have escaped from justice by retiring to other countries, or at least by absconding in a way that has rendered it impossible now to bring them to trial. It will be my duty to see that those persons be duly watched, and if secured, that they be brought to a trial to suffer for the crimes they have committed. In the meantime, as the conduct of this individual appears to us in the light I have described it, I am now disposed to allow him the benefit of your acquittal, by not offering any evidence against him.

The Jury immediately pronounced the prisoner—*Not Guilty.*

The Lord President.—William M'Intyre, you have heard what has been stated on the part of his Majesty's Advocate, that although he conceived you were implicated in the treasonable conduct for which the man who stood there the other day has been convicted, yet, as you do not appear to have taken a leading or a conspicuous part in it, he, with that discretion which is vested in his office, and with that regard to the administration of justice with mercy, which is a part of the constitution of this country, which has always been exercised on the part of his Majesty's Advocate, is not disposed to prosecute you on this occasion. I hope and trust, that this clemency will have a good effect upon your future conduct; and that it will make you both a better man and a better subject,—and duly sensible of the advantages of that glorious constitution, which I do not now say it was your object, but which it was the object of those with whom you were perhaps associated, to endeavour to overturn. They may have thought themselves in search of what they call the rights of their forefathers—alas! nothing but their ig-

norance of the history of this country, could lead them to believe for one moment, that they and their fellow-citizens did not enjoy rights, and privileges, and liberties, ten times more valuable than those which any of their forefathers ever did. You did not witness the proceedings upon the other trial, otherwise you would have seen a poor, friendless, unprotected man, tried with the same impartiality, with the same solemnity, with the same regard for justice and for mercy also, as if he had been the first nobleman or gentleman in the land. In the name of God, what more is it possible for any Constitution to provide for the people who live under it? their rights and liberties are protected—against their fellow-citizens on the one hand, and against the Crown on the other; and the meanest individual, accused of crimes against the state, knows he will be tried with the same impartiality and regard to justice, as the proudest noble in the land. Retire into the bosom of your family—retire to honest industry, and those habits which become your station. Whatever rights you may be entitled to, that of governing others, that of reforming the state, that of making the laws, never can, and never ought to belong to uneducated men like you; and the proceedings before us shew, that while they were vindicating their own rights, they were little regardful of the rights of others; they began by plunder; and these men, who were seeking for liberty themselves, began by compelling others by force to join them in their treasonable practises. Return, I say again, to the bosom of your family, and seek your subsistence by honest industry, and never associate with those who endeavour to disturb a Constitution, the boast and envy of the world, and as to which, the best that other nations think they can do to secure liberty to themselves, is by an humble imitation of it.

The prisoner retired from the bar.

ALEXANDER GRAHAM *was set to the Bar.*

Mr Grahame.—My Lord, on behalf of Alexander Graham I now humbly move your Lordships, that he may be allowed

to withdraw the plea of *Not Guilty*, which he has already pleaded, and plead *Guilty*.

Lord Advocate.—My Lord, in allowing the acquittal of the last prisoner, the Court will believe it did not proceed from a feeling that we had brought any person here against whom we had no evidence; but we were satisfied he was not of that description of offenders to form a proper example of punishment. The same objection applies to the individual now at the bar, and the same rule occurs to those who conduct this prosecution, as fit to be pursued in this case, and indeed in the case of the other two prisoners at the bar. After going most anxiously through their cases, and after the most mature deliberation, they appeared to me, and all my learned friends with me, to be, one and all cases, not of that great magnitude that ought to induce us to bring them for trial before a jury of the country. The indictment contains the names of every other person who was a leader. True bills have been found against them; and the same care will be taken to bring them to justice, as I have alluded to, with respect to the others; and therefore it appears to me we ought not to accept of this plea of Guilty from this individual Graham, but allow him the same benefit that the others in the same situation are to have granted to them.

The Jury were then sworn in the cases of ALEXANDER GRAHAM, JOHN MAY, *and* MATTHEW BOYLE.

The Lord President.—Gentlemen of the Jury, you have heard what was stated on the part of his Majesty's Advocate, with regard to Alexander Graham, that though he desired to retract his plea of Not Guilty, and to plead Guilty, that has not been permitted on the part of the Crown; you will therefore consider him as having pleaded Not Guilty also, and no evidence being led against him, you will acquit him as well as the rest.

The Jury immediately pronounced Alexander Graham, John May, and Matthew Boyle—*Not Guilty*.

Lord President.—John May, Alexander Graham, and Matthew Boyle, you now stand acquitted of the crime of High Treason with which you were charged. You have heard the manner in which that acquittal has been brought about by his Majesty's Advocate, stating, that although he was satisfied there was evidence to implicate you in the treasonable practices which were lately going on in this part of the country, yet, as you did not appear to have acted a conspicuous part, but rather to have been deluded and led astray by others, he was not disposed to proceed against you. I trust, that this instance of the mild and merciful administration of justice in this country will have its due effect upon you in making you both better men and better citizens, sensible of the advantages of the laws and constitution under which you live; but I would wish to impress upon you, as well as upon all those who hear me, or may hear the proceedings of this day, that if it shall hereafter be found that you and others do not take warning by what has happened, but flatter yourselves, that merely because you are obscure, and ignorant, and deluded, therefore you are to be at liberty to disturb the peace of this country with impunity; I say, if, by your future conduct, or that of others, that should appear, you will then be mistaken, because in Treason there are neither leaders nor followers, all are equally guilty; and if flattering themselves, and deceiving themselves, by what has now taken place, the lower orders of this country should in future allow themselves to be deluded and deceived, either by the treasonable speeches or writings of artful men, who wish to mislead them to their ruin, I say, if they so suffer themselves to be deluded or misled, and join in such treasonable practices again, they must lay their account with the law being executed against them in rigour, because it is only by mean instruments, such as you are, and numbers, that the Constitution can be overthrown; and, therefore, if in future you are so deluded, you may, and must expect, you will be treated with the same severity as others have been. I hope and trust better things of you three; that you will take warning by this escape, be thankful to the Lord Advocate for the mercy he has shewn you; go back to your

much influence, as your Lordships must know, upon the individuals in their employment. The country has a right to expect that such gentlemen will, in the times of peace and quiet, endeavour to direct the minds of the people, so as to keep them out of those disastrous circumstances into which they are too apt to be led by designing men, who are afterwards the first to desert them, and to leave them to their fate. I am confident that the manufacturers' influence is powerful and great over their men, and of this I had occasion to see striking examples at the time of these disturbances. With few exceptions, the whole manufactories here stopped work, yet there were exceptions, and these highly creditable to the persons to whom the works belonged. Among others, those works in which the Foreman of the present Jury has a concern, never stopped a day—the works of the highly respectable individual now at the head of the magistracy of the city, never stopped for a day—the works of another great manufacturer of this county, lately a representative in Parliament, though now no longer (I regret to state it, on account of the country) holding a seat there, never stopped for a day. My Lord, these facts shew the great influence that master-manufacturers have over their workmen. The master-manufacturers of this city did come to certain strong resolutions upon the subject, in the month of April last; and I wish I could say they had in every instance been acted up to in the spirit and manner I expected they would have been. To many respectable manufacturers the recommendation I am now giving is unnecessary; but to those who took back the whole of their men after the late strike of work, without inquiry or distinction, I would say, that if they valued their own interests and the safety of their property, they ought to use some influence with the workmen under them. On the late occasion, matters only proceeded the length of their workmen stopping work; but what certainty had they that it might not have gone a step further, and that a second proclamation might not have recommended the destruction of the whole manufactories in the town? If, therefore, they regard their own interests—if they regard the interests of their country—if they regard the interests of the unfortunate men under them, I trust the master-manu-

facturers will be disposed to watch the conduct of their men, and in particular, to dissuade them from becoming members of these Union Societies and associations, which have been at the bottom of all these disturbances. My Lords, without trespassing further upon your Lordships' time, I trust I shall be pardoned for what I have said, and for humbly expressing a hope that the scope of these proceedings, by furnishing, on the one hand, examples of punishment, which must, and ought to follow; and on the other, by exhibiting that spirit of leniency which the proceedings of this day have been calculated to evince, will combine in restoring and preserving public tranquillity, in uniting all ranks of men, and in contributing in some degree to our preservation as a loyal, religious, and virtuous people.

Mr Murray.—My lord, I do not know that there is any impropriety in my saying a few words—not where I differ, but where I agree with the learned Lord. I would not wish to take up the time of the Court with any matters of proof; they must be thrown out of view; and with regard to the men at the bar, I have nothing more to say, than that they would have appeared by my evidence to be entirely innocent. With regard to what the learned Lord has said of these transactions, I believe every honest man, every man who has any regard for the constitution of his country, under which he enjoys so many blessings, must regret and deeply deplore any measures of the nature of those which are pointed out in that proclamation—not merely pointed out, but recommended, insinuated, and enforced. I know not from what source it issued, how it was made, how it was framed; but it is a proclamation detestable and treasonable, whatever might be the source—it might be done by one individual or by more—I say nothing upon that, but I must express, as I did in the course of the trials, my abhorrence and detestation of it. I must also beg leave to say, that persons, of whatever political opinions they may be, must view such measures as lead to violence, as lead to turbulence, as lead to taking people from their honest industry and working—to the manufacturing arms or taking them, or any kind of riot or tumult—

I say every man must view this with abhorrence and detestation; and those who may be more attached, or who may suppose themselves more attached to the freer part of the constitution, and who may differ from the present government on many points—from their attachment to that—from their wish to see it always prevail—to see the subjects enjoy all their freedoms and all their liberties—they must view it with more detestation than the persons who may be willing to see a stronger and more powerful government; for every measure of that nature must inevitably lead to the diminution of the liberties of the subject, and afford those who are desirous to diminish them the strongest means of carrying them into effect. Therefore, if a man is attached to the freedom of his country, of all things he should abhor and detest violence, sedition, tumult, or any other irregular measures whatever. I would say more, but I am afraid I have already gone a little out of what is my proper duty, and I am indebted to the indulgence of the Court for permitting me to say so much.

The Jury were then sworn in the cases of WILLIAM CAMPBELL *and* GEORGE ALLAN.

Lord Justice Clerk.—The Lord Advocate having declined offering any evidence against these prisoners, Gentlemen, you will give them a verdict of acquittal.

The Jury immediately pronounced these prisoners—*Not Guilty.*

Lord Justice-Clerk.—William Campbell and George Allan—While the Court congratulate you upon the deliverance which you have now received by the verdict of acquittal of this Jury, I feel it necessary to address to both, and each of you, a few words in the way of advice. I trust that you are both fully sensible of the lenity and humanity with which the public prosecutor has conducted himself in regard to your case, that, notwithstanding a true bill for High Treason has been returned against you by the Grand Jury of this county, he has, in consideration of the circumstances which have just been stated, that you did not appear to him to have

been active leaders in this treasonable conspiracy, but to have in a certain degree been influenced by the power and terror which was endeavoured to be exerted against you by others, not felt disposed to proceed further against you. I trust, therefore, you are sensible that upon this occasion the public prosecutor has acted with great lenity and forbearance in refraining from proceeding to a full investigation of the concern which you had in this treasonable business. I trust, therefore, that it will have a due effect upon you in regard to your future conduct, and that you will, at least, be fully sensible of one remarkable feature of the constitution of that country against which this bill of indictment, found against you, charges, that you, with others, had entered into a treasonable conspiracy, namely, that though its laws are exerted with vigour, and will continue to be exerted with vigour against those who conspire against the constitution and the state, still those laws are and will continue to be administered with lenity and with mercy; and that those who are intrusted with their administration are in no case disposed to push them further than may be considered necessary for the interest and welfare of the state. Let me therefore recommend to you, in retiring into the bosom of your families, and into that circle in which you have formerly moved, to reflect upon your past conduct, and to endeavour, by your future life, to render it impossible, under any circumstances, that a similar charge should be preferred against either of you. For do not suppose that the lenity which has been shewn to you upon this occasion, has proceeded from anything but the motives which have been fairly disclosed by the public prosecutor; and which have, in the course of this day's proceedings, been evinced in a still more remarkable manner, by his Majesty's Advocate even refusing to receive a plea of Guilty, which had been offered by another person lately standing at that bar—he shewed a degree of tenderness to your interests, and to those of others who stood in similar circumstances, which, I trust, will have a lasting effect upon your minds, and lead you in your future conduct to shew that you are now loyal and virtuous subjects of the King—that you will continue during the remainder of your lives to fear God,

to honour the King, and not to meddle with those who are given to change.

William Campbell.—I return grateful thanks to your Lordships.

George Allan.—I return grateful thanks to your Lordships.

JAMES WILSON *was then set to the bar.*

Mr Knapp.—James Wilson, you have been indicted of High Treason; upon this indictment you have been arraigned, and pleaded Not Guilty, and for your trial have put yourself upon God and your Country, which Country has found you Guilty. What have you now to say for yourself why the Court should not give you judgment to die according to law?

SENTENCE.

Lord President.—James Wilson, You were put upon your trial in consequence of a bill found against you by the Grand Jury of this County, for the crime of High Treason; of that crime you have been convicted by the verdict of another Jury, chosen, I may say, in a manner almost by yourself, in as much, as out of a very great number who were summoned upon that Jury, you had the liberty of challenging, to a certain extent, all those against whom you could have the slightest objection; and by that Jury, thus chosen in a manner by yourself, you have been convicted of the crime of High Treason, of which you were accused. That crime is the highest known to the law of this country—all other crimes, however atrocious, however contrary to the word of God and to the precepts of morality, only strike at the rights of private individuals against whom they are committed, but the crime of High Treason strikes against the peace and safety of the whole community—every other man's rights and liberties, and life and property, are concerned in the commission of that crime; because the crime of High Treason, and particularly that branch of it which you have been convicted of, attempting to levy war against the King, neces-

sarily tends to the raising of civil war—the most dreadful calamity with which a nation can be afflicted. War, in its best form, between rival nations, actuated only by a spirit of interest in their governments, and a spirit of gallantry in their soldiers and sailors, leads to innumerable evils; but civil war, that of citizen against citizen, alas! has, in every age and country, been conducted with a degree of rancour and malignity which no foreign war ever assumed. The lives, the liberties, the property, the dearest interests of every man in this country, might, from the one end of the island to the other, have been endangered by the Treason of which you have been convicted. When we look to the means which were within your power, and those with whom you were associated, we cannot dread for one moment that that Treason would have been ultimately successful; but in this quarter of the country in particular, and perhaps in others into which the flame might have spread, the horror which it might have introduced is beyond the power of language to describe. I know well, sir, that you may possibly conceive, that, instead of having been guilty of a crime, you were engaged in a laudable attempt to vindicate your rights, and that, instead of being a criminal, you are the martyr and the victim of liberty. But remember that others have rights and liberties as well as you; and that we and others, the peaceable inhabitants of this country, who are satisfied with the blessings which we already enjoy under this constitution—we have rights and liberties which we are entitled to defend—we have rights and liberties which we are entitled to enjoy in peace, and we are not to be disturbed in our rights and liberties by others who may be discontented with the measure of them which they enjoy. But, sir, whatever may be your opinion as to the malignity of this crime, for which you are now to be condemned—whatever may be your feelings on that subject, remember that, like all of us, you are in other respects but a miserable and sinful creature. If you think that it is not a dreadful crime for which you are to suffer, remember that, upon the other hand, you may have many deep sins to answer for at the throne of God; and like all of us, whatever may be our end, whether by a natural or by a violent death, we have more

sins to answer for than we can possibly render an account of there. Therefore, let me warn you to consider that you are a miserable and a sinful creature, about perhaps shortly to appear at the mercy-seat of Almighty God, where you must answer, not only for this crime, of which you are here convicted, but for all the sins and vices of your past life. Let me exhort and conjure you to consider of your past life, and to make a good use of the short time that may be indulged you, in recalling to your recollection the sins you have committed, and praying to Almighty God for grace to repent of them. And remember, that it is not to repentance alone to which you are to trust. Repentance cannot wipe off or undo the sins you have committed. The justice of God is as inflexible as his mercy is infinite, and both must be satisfied; and as it is impossible that by any merits of your own you can satisfy the justice of God for the sins of your past life, let me exhort you to have recourse to his mercy, through the merits and mediation of our blessed Redeemer. I hope and trust you are not one of those miserable wretches who, with their allegiance to their King, have thrown off also their reverence for religion. I hope and trust that this is not your case, and that, in the awful and precarious situation in which you now stand, you will have recourse to the ministers of our holy Religion, who, of all sects and persuasions, (I know not to which you may belong) are always ready to give their assistance in comforting and aiding the devotions of unhappy men in your situation.

It is true, James, that you have been recommended to mercy by the Jury, and most sincerely do I hope that that mercy may be extended to you; but it is not the province of the Court to give it, nor can we guarantee it, or certify to you that it will be granted. The prerogative by law is vested in the hands of the Crown alone, and wisely and justly there vested;—wisely, because it is the Crown only, and those who advise his Majesty, sitting in a superior situation, so as to embrace within their view the whole interest of the country, that can possibly know whether it is expedient, in any individual case, that mercy should be extended; and it is justly vested in the

hands of the Crown, because, as the executive magistrate must be, in the exercise of his arduous office, exposed often to much odium in the discharge of it, where any credit is to be gained by the exercise of mercy, it should also be vested in him. He is bound by his oath of office to execute justice in mercy, but it must not be a capricious mercy—it must be a mercy exercised not only with reference to the individual case submitted to him, but with reference to the safety of the state at large; and therefore, however disposed his Majesty must be, and those who advise him are, to listen to the recommendations of a Jury so respectable as that which tried you, yet, on the other hand, he is bound to take into consideration the disturbed state of this country a few months ago. He is bound to consider what and how many examples may be necessary in order to recall the people of this country to their duty. These things his Majesty and his advisers must balance in their own minds; and whether or not that mercy recommended by the Jury will or can be extended to you, is what I cannot tell, and what you cannot possibly know. Let me exhort you, therefore, as your wisest course, to prepare for the worst. If mercy should be extended to you, you will not live the worse man that you have already prepared for death. I hope and trust you will take what I have now said to heart; and that, whatever may happen, you will make a good and proper use of the short time that remains to you. All that remains for me is, to pronounce against you the dreadful sentence of the law, which is,—That you shall be drawn upon a hurdle to the place of execution, and that you be there hanged by the neck until you be dead, and that afterwards your head shall be severed from your body, and your body be divided into four quarters, to be disposed of as his Majesty shall think fit, and may God Almighty have mercy on your soul. I have only further to intimate to you, that a precept will issue to the Sheriff for your execution on Wednesday, the 30th day of August next.

The prisoner was removed from the bar.

Lord President—Gentlemen of the Jury, Mr Sheriff, and Magistrates of this Town—It is impossible for me to close the proceedings at this place without taking some notice of

the topics which were addressed to you by his Majesty's advocate. I hope and trust that the labours of this Commission will be found not to have been in vain. That while, upon the one hand, what has taken place in this and another county, may still take place in the counties to which we are to go, will teach the people, in the first place, what Treason is, (which some of them were not perhaps aware of,) and that Treason is not to be committed with impunity; yet, on the other hand, that justice is always administered in mercy. I hope that will have a good and a double effect, in recalling the people of this country to their sober senses, and to the allegiance which they owe to their Sovereign, to the obedience which is due to the laws, and to the attachment which they owe to this glorious constitution. I say obedience to the laws, because whatever may take place within private families, great bodies of men can be governed only in two ways, by law or by force. There is no other way in which mankind can be governed, and other men, who respect their own rights and their own safety, living under a community in which obedience to the laws is not given by the people, must resort to, and themselves submit to force, in order to preserve the little degree of right and liberty which is allowed to remain; and, as was well observed by the Counsel for the prisoners, it is outrage against the law and the constitution which is most likely to lead to the establishment of military despotism. It has so led in every country under the sun—anarchy and confusion has, in the end, uniformly led to the establishment of military force. Look to every government in which rebellion, (such as this,) has been successful, and you will always find at last that the peaceable inhabitants have been obliged to submit to military force, rather than to that anarchy, which is worse, because no master can have the malignity of heart which belongs to an outrageous mob. Gentlemen, I hope and trust, therefore, that you will exert yourselves in your respective stations to enlighten the people as to their real rights and liberties. Look to the state of this country and our liberties, and let any man say whether it is possible to increase them with advantage to the state. The constitution within itself provides a

remedy for any evils that may occur; the Parliament can redress such grievances as are thought real; but for the people to take that right into their own hands is infallibly to overthrow and destroy that degree of liberty for which they are contending. Therefore, exert yourselves in your own stations; impress on the people the principles of obedience to the laws of morality and of religion; for, believe me, they are much mistaken—the people themselves are most miserably deluded—if they think that liberty in any country can subsist long without morality and without religion. The fact is, that in order that any people should enjoy long a free constitution, it is necessary that they should be to a great degree a virtuous people—liberty without virtue must degenerate into licentiousness. It is impossible it can do any thing else—and if liberty without virtue will degenerate into licentiousness, I have stated to you already, what all history informs us, that licentiousness will lead to the establishment of a military despotism. In order to guard the peaceable inhabitants against the effects of that licentiousness into which the people have fallen, let me recal to the master manufacturers those proper resolutions they some time ago entered into. Things are now reduced to peace and order, and let them teach their workmen, that by stepping out of their own line, to go into the walks of Treason and Sedition, they will be instantly discharged from their employments. If they are to go into Treason, let them live by Treason; but let them not seek to live by that honest industry which they seek to disturb in others. Be vigorous, strong, and united, in putting these resolutions into effect; because it is impossible that you must not see that, if no distinction is to be made between the peaceable and the orderly, the seditious and the treasonable, you are holding out the strongest possible inducement for men to be treasonable and seditious; and, therefore, I hope and trust that every description of magistrates in this county and city, from the highest to the lowest, will exert themselves in the exercise of a vigorous police; or if they find the present not sufficient, that they will give their cordial consent and co-operation to the establishment of a better; that they will set themselves a wholesome example of

morality and religion in their private families. Alas! I am afraid that there is not the same attention paid to the duties and to the exercise of religion in the higher orders which used to distinguish the people of this country, and particularly of this side of the island. Would it be believed that we are sitting here in the midst of that quarter of the country where our forefathers shed their blood as martyrs, not for the Christian religion alone, but for particular tenets, which some men might now-a-days think hardly worth defending! that we, the descendants of that people, so attached to our own Presbyterian form of religion, should now live in a corner of the land where, we are told, open blasphemy and disregard to the Christian religion itself prevails! I hope you will endeavour to check every species of blasphemy and impiety, both in conversation and publications; and that, wherever such are detected, you will exert the strong arm of the law to put them down. Those who print and circulate such publications, are liable to punishment; and perhaps the late state of the country can be ascribed to nothing more than to the relaxation of the police in this matter. With these observations, I believe I am now at liberty to discharge you from all your attendance, and I hope it will not be grudged by you. I am sure it will not be, if it is productive of the happy effects and consequences which I hope and trust will be found to rise from it.

Lord Advocate.—My Lord, there is no more business to be proceeded in at present in this county; with respect to the indictments against individuals who have absconded, writs of *certiorari* will be applied for in the proper quarter, to remove them into the Courts of Justiciary.

THE

TRIAL

OF

ROBERT MUNROE.

DUMBARTON-CHURCH,

Wednesday, 26th July, 1820.

DUMBARTON.

Thursday, 29th June, 1820.

PRESENT.

The Right Hon. CHARLES HOPE, President.
The Right Hon. DAVID BOYLE, Justice-Clerk.
The Right Hon. WILLIAM ADAM, Chief Commissioner.

GRAND JURY.

1. Rear-Admiral the Hon. CHARLES ELPHINSTONE FLEMING.
2. JOHN BUCHANAN Esq.
3. JAMES DENNISTOUN, Esq.
4. ROBERT M'GOWN, Esq.
5. DAVID ARTHUR, Esq.
6. JOHN M'ALISTER, Esq.
7. PATRICK MITCHELL, Esq.
8. WALTER DUNCAN, Esq.
9. JOHN FREELAND, Esq.
10. JOHN GREY of Sauchenhall, Esq.
11. WALTER AITKEN, Gentleman.
12. JAMES SMITH, Esq.
13. JOHN M'KEAN, Esq.
14. GEORGE SHAW, Esq.
15. ALEXANDER CORBET, Esq.
16. JOHN GOODWIN, Merchant.
17. JOHN PATERSON, Gentleman.
18. JOHN GRAY of Bedcow, Gentleman.

19. Robert Stewart, Gentleman.
20. Charles Stewart, Gentleman.
21. John Gardner, Gentleman.
22. James M'Kean, Gentleman.
23. William Calder, Gentleman.

The Grand Jury being sworn, the officers of Court appointed, and the same forms observed as at Stirling, the Lord President delivered his charge to the Grand Jury.

The witnesses, whose names were indorsed on the back of the bill of indictment presented, were then sworn in Court to give evidence before the Grand Jury.

The Court adjourned for two hours; and having met again at three, the Grand Jury returned a true bill for High Treason against

Duntochar Case.

Patrick M'Devitt, smith,
William Blair, cotton-spinner,
Robert Munroe, cotton-spinner,
George Munroe, cotton-spinner,
Richard Thomson, cotton-spinner,
William M'Phie, cotton-spinner,
Robert M'Kinlay, tailor,
William Roney, labourer,
Robert Sinclair, cotton-spinner,
John Stewart, cotton-spinner,
Daniel M'Nab, cotton-spinner,
Archibald M'Lean, cotton-spinner,
Alexander Lindsay, cotton-spinner,

All of the parish of West-Kilpatrick, in the county of Dumbarton.

The first six indicted. The seven last not in custody.

Bill not found against Andrew Paul.

At the request of the six prisoners, the Court assigned James Moncrieff, and Henry Cockburn, Esqrs., as their Counsel; and Patrick Mitchell, and Archibald Colquhoun, Writers in Dumbarton, their joint Solicitors, or Agents.

And the prisoners were served with copies of the indictment, and a list of witnesses, and a list of the Jury who were to be on their trial.

Adjourned to Wednesday, 12th July.

Wednesday, 12*th July*, 1820.

PRESENT.

The Lord President.
The Lord Justice-Clerk.
The Lord Chief-Baron.

At the request of the six defendants, the Court assigned John Peter Grant, and Erskine Douglas Sandford, Esqrs., as their Counsel, in the room of Messrs Moncrieff and Cockburn; and in the event of Mr Grant not attending the trial, Francis Jeffrey, Esq., was assigned in his room.

The six defendants were then severally arraigned, by reading the indictment, which was precisely the same with that in Lanarkshire, except that the names of the accused were

Patrick M'Devitt,
William Blair,
Robert Munroe,
George Munroe,
Richard Thompson,
William M'Phie,

and the *locus delicti*, the parish of West-Kilpatrick, in the county of Dumbarton.

The prisoners pleaded *Not Guilty*; and the Court informed them, that they must be prepared to take their trial by Wednesday, the 26th of July.

Complaint having been made that persons were admitted to see and converse with the several prisoners indicted for High Treason, it was ordered, that no person whatever be permitted to visit, write to, or converse with all, any, or either of those prisoners, except the agents or counsel for them, who have been assigned by the Court.

A precept issued to the Sheriffs, for summoning the Petit Jury, to try the six defendants on 26th July; to which day, the Court adjourned.

THE

TRIAL

OF

ROBERT MUNROE.

Dumbarton-Church, Wednesday, 26th July, 1820.

PRESENT.

The Lord President,
The Lord Justice-Clerk,
The Lord Chief Baron, and
Lord Pitmilly.

Counsel for the Crown.

The Lord Advocate,
The Solicitor-General,
Mr Sergeant Hullock,
Mr Drummond,
Mr Hope.

Counsel for the Prisoner.

Mr Grant,
Mr Sandford.

Mr Grant.—My Lord, there is one gentleman on the Jury whom I intend to challenge, for cause; and I wish to know, whether it is now my duty to state this matter, or wait till I come to my challenge.

Lord President.—It is fairer to do it now, because you throw away your challenge by it otherwise.

Mr Grant.—When he comes to the book to be sworn, I shall state my objection to this gentleman, that he is possessed of the estate only as a trustee.

Lord Chief-Baron Shepherd.—If Mr Grant means to challenge him for cause, the proper time will be, when he comes to the book to be sworn. The first thing is, to ascertain whether the gentlemen, according to their own account, are qualified. When they come to the book to be sworn, is the time for challenging for cause.

The Jurors returned by the Sheriff were called over, when it was ascertained that the following were not freeholders of the county of Dumbarton, to the amount of forty shillings a year:—

John Blackburn, Esq.
Claud Neilson, Esq.
Alexander Dunlop, Esq.—being in possession of land only as a trustee.
James Risk, Esq.
Thomas M'Gill, ship-carpenter.
William Smith, farmer.

The following Jurors were excused:

Henry Bell, vintner, being absent from home.
John Laing, merchant, being one of the present Magistrates of the Borough.
Jacob Dixon, merchant, being absent in Ireland.
Robert Thomson, gentleman, on account of illness.
Robert Wilson, farmer, on account of age.
James Milne, weaver, on account of advanced age, and general infirmity

Archibald M'Farlane, grocer, on account of being confined to his bed by an accident.

Patrick Mitchell, writer, on account of being an agent for the prisoner.

Thomas Connel, shoemaker, on account of illness.

Robert Hopkin, hinge-maker, on account of illness.

James Buchanan, Esq.

The Jurors who had answered to their names, were again called over.

Sir James Colquhoun, Baronet—challenged by the prisoner.

John Rowet Smollet, Esq.—challenged by the prisoner.

James Hamilton, Esq.—challenged by the prisoner.

Alexander Geils, Esq.—challenged by the prisoner.

Robert Robertson, Esq.—challenged by the prisoner.

James Buchanan, Esq.—challenged by the prisoner.

James Ewing, Esq., was called; and being asked, "Are you possessed in your own right, or in right of your wife, of lands or tenements, in freehold or life-rent, of the yearly value of forty shillings?" answered, "I am."

Mr Grant.—I challenge him for cause, he not being qualified in terms of the statute; and therefore I presume my course is to permit the gentleman to be sworn, and then to examine him upon his qualification. I perhaps may state to your Lordship the ground of my objection, as it is stated to me. This gentleman has divested himself, as I am told, of this property; and I believe it is in favour of a gentleman who was supposed to be qualified upon the very disposition or conveyance of this gentleman's estate, Mr Alexander Dunlop, who is the Juryman No. 50. Your Lordships will observe, it is not my wish to press into the affairs of the gentleman. My statement is just this; that, for certain reasons, this gentleman has divested himself of his property, by an absolute disposition in favour of the other gentleman, who holds the property in trust for himself and other persons.

Lord Chief-Baron Shepherd.—This gentleman has no beneficial interest at this time in the property.

Mr Grant.—That is my objection, that it is absolutely vested in the other gentleman as trustee.

Lord Chief-Baron Shepherd.—Now you must ascertain that fact. If you examine him, you must take his account such as it is; if not liking to do that, you chuse to establish the fact by evidence, it must be by the deed, and the Court will decide on it afterwards. You will adopt either course. If you ask the gentleman, you must be satisfied with his answer. You cannot, after you have examined him, try it by other evidence. Supposing you have witnesses to prove your facts, the course would be to swear the witnesses, and let them prove the facts, and the Court will decide the law.

Mr Grant.—I shall be quite satisfied with his own account, as I am certain he will state candidly the facts; therefore, if your Lordship pleases, let the gentleman be sworn, and I will put the question to him, which will raise the question of law.

Lord Justice-Clerk.—There can be other evidence to that.

Mr Solicitor-General.—I am desirous to submit to the consideration of the Court, a question upon the competency of the mode of proof, by which the fact now alleged is proposed to be established. The fact which is proposed to be established is simply, whether an individual is divested of his landed property, and to what effect he is so divested, supposing the fact to be so. Now we, upon this side of the Bar, submit, that the fact here at issue can only be established by production of the deed by which he is divested; that is the best evidence; and as it is not said that this appropriate evidence is not extant, it ought to be produced; and we submit that no other evidence is capable of being received by the Court in the present state of the circumstances. My Lords, although we are now properly in an English court, and engaged in administering English law, this question as to the evidence of qualification must be decided by Scotch law alone, because the question depends on the terms of the investiture of Scottish land; now, whether the Juryman here is divested or not, or to what effect he is divested, in reference to the question of qualification, is strictly a question of Scotch law, and must necessarily depend upon a mi-

nute examination of the terms of the deed; and I submit, that it being a question of so delicate a nature, and depending so entirely upon the peculiar terms of the deed, it is not competent, and would not be safe to take any other evidence upon the subject, but that of the deed itself; not merely to discover what the terms of the deed are, from which its legal effects are to be learnt, but to discover also whether it is itself a valid and effectually executed deed in law. My Lord, I submit, upon these grounds, therefore, that first of all, it is the duty of the Court to inquire whether the deed exists; and if it does exist, in whose possession it is.

Lord President.—Mr Solicitor-General, the Court is of opinion this gentleman ought to be examined in the first instance. He has already said he has a qualification, and therefore it lies on the Counsel for the prisoner to prove he has not; but the gentleman may have possessed the interest he has stated, and he may say I have granted a trust-deed, and am entitled to the reversion; but, at the same time, I have given it to trustees, and receive no beneficial interest from it; the estate is given to creditors to pay their debts, the reversion belongs to myself, and the reversion may be considerable; but, in the mean time, he may be deriving no interest whatever out of that estate, and therefore he cannot say he has freehold to the amount of forty shillings; if he still says he has such beneficial interest as qualifies him, it remains on Mr Grant to prove his objection, and then will be the proper time to consider whether he must not produce the deed.

Lord Chief-Baron Shepherd.—If the gentleman says he has no such interest, then you swear him on the *voire dire* to that; but the gentleman has said, I have; he may mistake the nature of his estate, and he may be asked to explain it.

Mr Grant.—Then I shall not be shut out of the means of proving my case.

JAMES EWING, Esq.—*sworn.*

Examined by Mr Grant.

Q. Where are your lands situate that you say qualify you?

A. In the county of Dumbarton, in the parish of Cardross.

Q. Have you conveyed those lands away to any person?

A. I gave a disposition to the Renfrewshire Bank, of which Mr Dunlop is a partner, for certain sums of money.

Q. What certain sums?

A. Above L.12,000.

Q. Was that an absolute conveyance to those gentlemen of your estate?

A. The last was a——

Mr Serjeant Hullock.—I submit that question cannot be put on any principle of law; you cannot take the effect of a deed in the abstract.

Lord Chief-Baron Shepherd.—I was about to say to Mr Grant, that I am afraid he cannot put that question. The gentleman says he has a qualification; but that may be a mistake. The best way will be, to ask him, whether he has at this time a beneficial interest issuing out of those lands, of which he is in possession, to the amount of forty shillings a-year.

Mr Grant.—Are you now in possession of those lands?

A. I certainly consider myself as such till the lands are sold.

Q. Do you receive the rents?

A. I have hitherto.

Q. For your own use?

A. For my own use.

Mr Grant.—I have no further questions, and therefore I challenge him peremptorily.

Thomas Geils, Esq.—challenged by the prisoner.

John Horroks, Esq.—challenged by the prisoner.

George Lang, gentleman—challenged by the prisoner.

Dougald Cumming, gentleman—challenged by the prisoner.

Archibald M'Lachlane, gentleman—sworn.

Colin Campbell, Esq.—challenged by the prisoner.

John Turnbull, gentleman—challenged by the prisoner.

William M'Farlane, gentleman—sworn.

John M'Farlane, grocer—sworn.

John Brabender, mason—challenged by the prisoner.
Parlane M'Farlane, farmer—sworn.
Robert M'Hutcheon, miller—sworn.
James Stirling, calico-printer—challenged by the prisoner.
Robert Galloway, house-carpenter—challenged by the prisoner.
Andrew M'Kinlay, house-carpenter—challenged by the prisoner.
Peter M'Arthur, house-carpenter—challenged by the prisoner.
Thomas Napier, vintner—challenged by the prisoner.
James Rochead, saddler—challenged by the Crown.
Henry Reed, land-surveyor—challenged by the Crown.
David Napier, smith—sworn.
Alexander Campbell, farmer—challenged by the prisoner.
John Latta, portioner—sworn.
Robert Denny, farmer—sworn.
James Lang, farmer—sworn.
James Bain, farmer—challenged by the prisoner.
John M'Auslane, maltman—challenged by the prisoner.
John Gay, farmer—challenged by the prisoner.
Donald M'Farlane, grazier—sworn.
John M'Farlane, farmer—challenged by the prisoner.
James Smith, farmer—sworn.
John Todd, youngest, calico-printer—challenged by the prisoner.
Walter Scot, farmer—challenged by the prisoner.
William M'Lellan, miller—challenged by the prisoner.
Robert Aitken, farmer—challenged by the Crown.
Walter Colquhoun, Esq.—sworn.

THE JURY.

ARCHIBALD M'LACHLAN.	JOHN LATTA.
WILLIAM M'FARLANE.	ROBERT DENNY.
JOHN M'FARLANE.	JAMES LANG.
PARLANE M'FARLANE.	DONALD M'FARLANE.
ROBERT M'HUTCHEON.	JAMES SMITH.
DAVID NAPIER.	WALTER COLQUHOUN.

Lord President.—The rest of the Petit Jury who are not sworn, will not be wanted to-day; therefore, they may retire, and give their attendance here to-morrow morning at nine o'clock.

Lord President.—I have to give notice, that the Court will not permit any part of the evidence, or speeches of Counsel, to be printed, until the whole of the trials in this and the other counties are concluded; because it is in vain that the witnesses on both sides are inclosed, if they can read what has passed in print the next day; therefore, upon pain of the highest punishment this Court can inflict, all persons will take notice of this.

The Jury were charged with the prisoner in the usual form. The indictment was opened by Mr Maconochie.

Mr Solicitor-General.—May it please your Lordships—Gentlemen of the Jury—From the indictment which you have heard partly read by the Clerk of the Court, as well as from the short statement that has been made to you by my learned Friend, by whom you have been addressed, you are aware, that the prisoner at the bar is brought here under a charge of Treason; and you are now assembled upon your oaths, to determine whether he is innocent or guilty of that great crime.

Gentlemen, in what I have to state, it will be necessary for me to call your attention, particularly to the nature of the Treasons wherewith the prisoner is charged; and in order that this may be intelligible to you, it is proper that I should call your attention to the law of Treason in general, upon which the indictment is founded; because I shall thus have it in my power to confine your attention to those particular points, which it will be alone necessary for you to consider, when you come to apply your judgment to the evidence and to the facts, as they shall be disclosed to you by the witnesses who are to be brought before you.

It is known to all of you, that by the Scotch Union, by which the kingdoms of England and Scotland were united and incorporated, and rendered one kingdom, it was provi-

ded, that the law which defined the duty, and secured the allegiance of the subjects to the Sovereign, and to the constitution of the kingdom, must be made the same throughout the whole united kingdom; and accordingly, by an Act of Parliament which followed shortly after the Union, (an Act passed in the reign of Queen Anne,) it was provided, that the law of Treason throughout the kingdom should be taken from the law of England; and, therefore, the law of Treason, applicable to Scotland, now applicable to the whole of the empire, is that which was established by the statutes of England, and which has been matured by a long series of judgments pronounced by the Judges of England.

It will be proper for me to read to you the terms of the statutes upon which the law of Treason is distinctly and precisely founded.

The first is, a statute passed in the reign of Edward III.; and is both very short in its terms, and perfectly distinct. This is the 25th Edward III.—" Whereas divers opinions have been, before this time, in what case Treason shall be said, and in what not, the King, at the request of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth; that is to say, when a man doth compass or imagine the death of our Lord the King; or if a man do levy war against our said Lord the King in his realm; or be adherent to the enemies of our Lord the King in his realm; giving to them aid or comfort in the realm, or elsewhere; and thereof be provably attainted of open deed by the people of their condition," they shall be judged guilty of Treason.

Now it cannot have escaped you, that there are here stated two distinct kinds of Treason; and they are expressed in terms remarkably different and distinct from each other. The first is; if a man doth compass and imagine the death of our Lord the King, and be thereof provably attainted of open deed—and you will here observe, that to the crime—to the circumstance of compassing, or imagining, and intending the death or destruction of the King—to that act of the mind, the crime and the sanctions of Treason are attached. But in order to protect the subject from being ren-

dered liable to the high sanctions of Treason, for what might be nothing more than the undivulged thoughts of his heart, the statute has added the remarkable words which I have read,—" and be thereof provably attainted of open deed, by the people of their condition;" that is, as all the authorities express it, something must have been done—some outward or overt act must have been done, in order not merely to prove that he did entertain such compassing, and such wicked imagining, but those overt acts must be of such a nature, as to indicate something or other done in the progress and towards the perpetration of that wicked purpose.

The other Treason defined in the statute which I have read, is, " If a man do levy war against our Lord the King within his realm." Now it comes to be a question, When it is that a man is held to levy war against the King? And in order to discover this, it is only necessary to attend, for one moment, to the situation and character of the King, as a branch of the Constitution. The King forms, as you are quite aware, the third estate of the kingdom; and he forms that estate of the kingdom, upon whom the duty of the executive is imposed, not merely as a privilege, but as a sacred and incumbent duty. In consequence of this, you will observe, that it is quite impossible that any attempt can be made by force to innovate or alter any part of the Constitution of the kingdom, without, as a matter of absolute necessity, levying war against the King; and, accordingly, it is so stated, as I shall shew from the best authorities—it is so stated in all the text writers of the law upon the subject. " But every insurrection, (it is said by Mr Justice Foster,) which in judgment of law is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him—these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war or not; and every conspiracy to levy war for these purposes, though not Treason within the clause of levying war, is yet an overt act, within the other clause of compassing the King's death. For these purposes cannot be effected by numbers and open force, without manifest dan-

ger to his person." The same author goes on further to explain that wherein consists the levying of war. "Insurrections, in order to throw down inclosures, to alter the established law, or change religion, or to enhance the price of all labour, or to open all prisons, and risings, in order to effect these innovations of a public and general concern, by an armed force, are, in construction of law, High Treason, within the clause of levying war; for though they are not levelled at the person of the King, they are against his royal Majesty; and besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government too, by numbers, and an armed force. Insurrections, likewise, for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the King, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest—risings to effect these ends by force of numbers, are, by construction of law, within the clause of levying war; for they are levelled at the King's crown and royal dignity."

Mr Grant.—What book are you quoting from?

Mr Solicitor-General.—Foster, page 210, 211.—While the law stood singly upon the statute which I have quoted, all compassings and imaginings, all intentions which had for their object to compel or constrain the King in the exercise of his kingly office, provided these were evidenced by any thing done towards their perpetration, such as by holding consultations, by the assembling of persons, by the preparation of arms—all such intentions so evidenced, were High Treason; and upon the same principle, the actual levying of war, and assembling of multitudes with arms, however imperfect their arms might be, were, in conformity to the principles which I have stated, overt acts of compassing and imagining the death of the King. Nay, further, although it is not necessary for the purpose of our duty to-day to inquire into it, all conspiracies of persons for the purpose of levying war for such general objects—all such conspiracies were held to be overt acts of the design and imagination of

compassing the King's death, or of restraining and overpowering him in the exercise of the kingly office.

But in order to clear up all doubts, and to render the law so unquestionable, that the most imperfect understanding should not be able to mistake it upon a question of such high interest, a statute was passed during the reign of the late King, to which it is necessary that I should now distinctly call your attention. The statute to which I refer, is the 36th George III. chap. 7. "If any person, after the day of the passing of this act"—(I am reading now the terms of the statute) "during the natural life of the King," and so forth—"shall, within the realm, or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm, tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of the same, our Sovereign Lord the King, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his Majesty's dominions or countries; or to levy war against his Majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels; or in order to put any force or constraint upon, or to intimidate or overawe both Houses, or either House of Parliament; or to move or stir any foreigner or stranger with force to invade this realm, or any other his Majesty's dominions or countries, under the obeisance of his Majesty, his heirs and successors; and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, upon the oaths of two lawful and creditable witnesses upon trial, or otherwise convicted or attainted by due course of law, then every such person or persons, so as aforesaid offending, shall be deemed, declared, and adjudged to be a traitor and traitors."

Gentlemen, it is to the law, as declared and defined in this statute, that your attention is to be principally, and almost entirely, directed; and the question which you will

be called upon to consider, is, whether there does not exist, and whether there shall be established in evidence before you, a conspiracy, in which the prisoner at the bar is concerned—a conspiracy to levy war for the purpose of accomplishing a change in the constitution of the kingdom? It is not charged, and I most particularly request you to keep this in your mind,—it is not charged that they did actually levy war for that purpose; but it is charged, and will be proved, as I shall afterwards explain, that the prisoner at the bar, along with others, did invent, compass, and devise to levy war for that general traitorous object; and it will be for you to consider, whether there is sufficient evidence of the overt acts in furtherance of that treasonable conspiracy. What is, or what is not, a sufficient overt act in law, is a question upon which it is the peculiar province of the Court to direct you. Whether the facts stated as amounting to an overt act, be generally and sufficiently proved, is a question which it is your peculiar province to determine. That is a question of fact upon which you are the sole and exclusive judges. But upon the other hand, I must remind you, that the question, whether the facts so stated, supposing them to be proved, do, in law, amount to an overt act of a treasonable conspiracy? is a question upon which it is the peculiar province of the Court to determine; and upon which I do not entertain a doubt that you will pay the utmost deference to their opinion.

I may state in the mean time to you, generally, how the most learned and eminent Judges have expressed themselves upon the question, as to what is, or is not, a sufficient overt act of a conspiracy to levy war, under the very statute which I have now read. I quote from a celebrated trial, only recently concluded; I mean the trial of Thistlewood and others, who were indicted upon the very statute which I have now read; and the Chief-Justice of England, (the highest living authority with which we are acquainted,) thus expresses himself:—"I have already intimated, that any act manifesting the criminal intention, and tending toward the accomplishment of the criminal object, is, in the language

of the law, an overt act. It will be obvious that overt acts may be almost infinitely various; but in cases where the criminal object has not been accomplished, the overt acts have frequently consisted of meetings, consultations, and conferences, about the object proposed, and the means of its accomplishment—agreements and promises of mutual support and assistance—incitement to others to become parties to, and engage in, the scheme—assent to proposed measures, or the preparation of weapons, or other things deemed necessary to their fulfilment. All these, and other matters of the like nature, are competent overt acts of the particular compassing and imagination to which they happen to apply."

Gentlemen, this is a clear and authoritative statement of the principles of law by which, in this investigation, you are to be guided; and upon which the indictment, whereon the prisoner is now charged, is founded. Accordingly, the indictment contains, as you have heard, four counts. Of those counts, the first and second are founded upon the 25th Edward III.; and the first count is compassing and imagining the death of the King; the second, levying war against the King. The overt acts of compassing and imagining the death of the King, are conspiring to levy war, and to subvert the constitution, purchasing and providing arms, and so on. Now the second count, as I have explained to you, is for levying war; but I may add, that with this count or charge you need not give yourself any trouble; because I state to you distinctly, that this is not a case of actual levying war. The third and fourth counts, again, are founded on the 36th of the King, which I read; and they state compassing and intending to depose the King, and compassing and intending to levy war against the King, and the overt acts of levying war against the King, are those which I have already stated, to be charged under the first count of compassing and imagining the death of the King.

Such being the law, I am now to trouble you with a short statement of the general character of the facts which are to be disclosed in the evidence to be brought before you; and those are of a nature perfectly simple, and most

fatally conclusive. It appears, that about the beginning of April—about the first, second, or third of April last —a paper, bearing to be an Address to the Inhabitants of Great Britain and Ireland, was disseminated throughout various districts of the country, and particularly throughout the village of Duntochar, and the whole adjacent district, to an extent, and with a degree of diligence, that is exceedingly remarkable;—it is, indeed, a most remarkable thing, that an Address of the nature of that to which I am to call your attention, should have appeared throughout so large a district of Scotland—throughout all the great towns in the West of Scotland; and yet, that the persons by whom that Address was put up, should have escaped the most anxious inquiries of the police; but unfortunately such is the fact. That Address appeared, as I have stated to you, throughout the village of Duntochar, and within the town in which you are now assembled; and that Address is in the terms quoted in the indictment, and to which I will shortly call your attention. I do not mean to read it all, but I shall quote some of the most remarkable parts of it. The commencement of it is in these terms:—"Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have reduced us to take up arms for the redress of our common grievances." Gentlemen, it would be an idle waste of your time, to argue what no lawyer, and what no man of common understanding, will for a moment dispute or deny, that the passage which I have now read, is as gross, undisguised, and malignant Treason, as ever was committed to paper. They are to assert their rights at the hazard of their lives; and they are called upon to take up arms for the redress of their common grievances. It goes on to say, "Liberty or death is our motto; and we have sworn to return home in triumph, or return no more." This is just of the same character. This sentiment, and this declaration, is of the same character of the paragraph which

because I state it to you as an overt act, receiving its character, and receiving its traitorous criminality, from its connection with the general purpose which the prisoner at the bar, along with others, had conspired to accomplish.

Gentlemen, these are generally the overt acts to which the prisoner at the bar, with his associates, had resorted, before their hopes had failed in the desperate wickedness of the enterprize in which they had engaged; and I need only repeat to you here, what I have already stated, that this is not a case of actual levying of war—it is not stated to you on the part of the Crown, as being a case of that nature—it is a case of a treasonable conspiracy, which had not arrived at its full accomplishment, by an actual levying of war, or by the accomplishment of any of the general purposes for which the conspiracy was entered into; but that makes no difference in the deep criminality of the intention by which the prisoner was actuated; and it can form no ground, in your mind, for not finding against him, if the fact shall be proved, a verdict of Guilty. It is of infinite consequence; and it is a principle which lays at the foundation of all wise systems of criminal jurisprudence, to crush crimes at their commencement. The principle and the means which the law affords of doing this, are not only well-founded for the public advantage, but they are deeply founded in the wisest humanity—humanity to the individuals who are deluded into criminal enterprizes; and still more deeply in humanity towards the general welfare of the public. If it be of consequence in private crimes, or in crimes which are directed to murder, or plunder, or private objects, in which one individual, or one class of individuals merely are the objects of destruction—If it is wise and beneficial to punish crimes in their commencement, which are directed to such objects, I am sure all who hear me must be satisfied, that it is infinitely more wise, and more humane, infinitely more indispensable, for the public welfare, to punish in its commencement a criminal conspiracy, which has for its object the accomplishment of the total subversion of the Constitution—an enterprize which cannot be begun—which cannot be completely accomplished—which cannot be partially executed, without bringing along with it the deepest and the

most infinitely extended miseries that a country can be doomed to suffer. It is impossible to contemplate the partial execution of such a conspiracy and enterprize, without feeling strongly that it is not more necessary for the public good, than it is for the humane government of that class of individuals to whom the prisoner at the bar belongs—to set upon it the mark of the law, by means of a verdict of a Jury, shewing the deep criminality, and the hopeless danger which attends even the commencement of such an enterprize.

Gentlemen, your duty, therefore, is to consider and determine, according to the evidence that shall be laid before you, first of all, whether any conspiracy is proved to exist. You are next to determine, whether that conspiracy had for its object the accomplishment of a private purpose, or the accomplishment of that general purpose which I have explained. If you are of opinion that it had for its object the accomplishment of a private purpose of robbery, or murder, or any other private violence, however criminal, then, whatever may be the crime for which they are responsible, it is at least not the crime of Treason. You are to consider, in the next place, whether the facts which we allege as amounting to an overt act of Treason, are clearly established; and you will look to the Court for advice, whether those facts, when they are proved, do amount to an overt act of a conspiracy, such as I have explained. If, on the whole matter, you shall experience in your own minds any doubt, such doubts, provided they be of a reasonable nature—of a conscientious nature—you must resolve in favour of the prisoner; but if, on the other hand, not merely a criminal and traitorous conspiracy is proved, but the overt acts in furtherance of its execution are likewise established, even although those acts do not amount to the actual levying of war, I do state to you, that by fixing the sanction of your verdict upon that offence, you will do a much more essential service to your country, than any thing which has yet been accomplished in the prosecution of those judicial investigations which have occasioned the assembling of this Commission.

EVIDENCE FOR THE CROWN.

JOHN BULLOCH, JUN.—*sworn.*

Examined by the Lord Advocate.

Q. You live at Duntochar, do not you?
A. Yes.
Q. What is your father?
A. A miller.
Q. At Duntochar?
A. Yes.
Q. And he has a mill there?
A. Yes.
Q. You do not live with your father, do you?
A. Yes.
Q. Is there a forge near to your father's mill?
A. Yes.
Q. Is it immediately adjoining to it?
A. Yes.
Q. How are they separated from each other?
A. There is a wall between the two.
Q. Does that wall go to the roof of the house, or can you see over the wall in any way? Is the under part of the wall formed of different materials from the upper?
A. Yes, of stone.
Q. To what height?
A. I could not say what height.

Lord President.—About it?

A. Level with the second floor.

Lord Advocate.—Above that it is a wooden partition?

A. Yes.

Q. And you can see through between those two?

A. Yes.

Q. You have been in this forge?

A. Yes, I have been in it.

Q. To whom does it belong?

A. To Mr Edington.

Q. Are there hammers in it driven by machinery?

A. Yes.

Q. By what means is it?—by water, or by what other means?

A. By water.

Q. How many hammers are driven in this way?

A. Two.

Q. Very large?

A. Yes.

Q. Both?

A. Yes.

Q. Do they move very rapidly?

A. Yes, they do.

Q. Is there any other apartment near this forge? does it consist of more than one? is there any finishing-shop?

A. Yes, there is a finishing-shop.

Q. Adjoining to the place where the hammers are?

A. Yes.

Q. Can you see into this finishing-shop from the opening you have described?

A. No.

Q. Were you at home upon the Monday, the 3d of April last?

Mr Grant.—You should hardly suggest the date to him.

Lord Advocate.—I beg your pardon; it was in the beginning of April last.

A. Yes, I was at home.

Q. Did you go to the corn-mill at any time that day?

A. Yes.

they suffered to remain, or did you see any thing done with them but what you describe?

A. No, I did not see.

Q. They were all left there?

A. Yes.

Q. What number of persons might be in the forge at this time?

A. There might be near twenty boys there.

Q. Tell us how many grown persons there might be, and how many boys?

A. I could not say.

Q. About what proportion?

A. I could not say; there were about twenty in number.

Q. How many were boys

A. I am sure of six or more boys.

Mr Grant.—If those gentlemen who are to try the prisoner cannot hear you, how can they judge of your evidence?

Lord Advocate.—Do you mean to say there would not be fourteen grown persons in the house at that time?

A. Yes, I think about that.

Q. What were they doing? standing still?

A. Yes.

Q. All standing still?

A. Some were walking.

Q. Were they walking about at all?

A. Yes, there were some carrying from the furnace to the hammer.

Q. Carrying what?

A. Those hot irons.

Q. What was done with them after they were taken to the hammer?

A. They were put below the hammer and flattened.

Q. And then thrown upon the floor?

A. Yes.

Q. Did you see what became of them when they were cold?

A. No; I saw them lying upon the floor.

Q. Did you see any of those persons going from the forge to the finishing-shop, as you describe it?

A. Yes.

Q. Were they carrying any thing?

A. I could not say whether any person was carrying any thing; not any person that I know.

Q. Did you see any persons carrying any thing?

A. Yes.

Q. What things were they carrying?

A. Those flattened files.

Q. I understand you to mean that they were carrying those files, after having been flattened and were cold, into the finishing-shop. Where were they carrying them to?

A. I could not say.

Q. Where did they carry them to?

A. They carried them to the furnace door.

Lord President.—Where does that door lead to?

A. To the highway. The finishing-shop adjoins the furnace; but you have to go into the highway before you can go into the finishing-shop.

Lord Advocate.—Is the door of the finishing-shop immediately adjoining the door of the forge?

A. No; you could not see the finishing-shop door.

Q. Were they immediately adjoining each other?

A. Yes; one door is just adjoining the other.

Q. Will you tell us what persons in that forge upon that occasion you knew?

A. I saw Patrick M'Devitt, William Rowney, Robert M'Kinlay, George Munroe, and Robert Munroe.

Q. Do you see any of those persons present?

A. That is Robert Munroe, (*pointing him out.*)

Q. Is George Munroe there?

A. He is there, (*pointing him out.*)

Q. Any more, do you remember?—was there a person of the name of Lindsay there?

A. I was told——

Lord President.—That will not do; it is only the persons you know yourself.

Lord Advocate.—You know a man of that name?

A. I know a man of that name; I do not know him by sight.

Q. Was there a person of the name of Smith there?

A. I do not know Smith.

Q. Was there a person of the name of M'Kinlay there?

A. Yes.

Q. M'Laughlan?

A. I do not know M'Laughlan.

Q. Do you know a person of the name of Lowrie?

A. Yes.

Q. Was he there?

A. Yes.

Q. Do you know his first name?

A. No, I do not.

Q. You know this person, Robert Munroe?

A. Yes.

Q. Have you been long acquainted with him?

A. Yes.

Q. When did you first become acquainted with him?

A. I went to school with one of them.

Q. Which?

A. It is the old one.

Q. Which of them?

A. George.

Q. And you have known Robert from that time too, have you?

A. Yes.

Q. What are they—how are they employed?

A. In the cotton-works.

Q. Where?

A. At Mr Dunn's cotton-works at Duntochar.

Q. They are spinners, are they?

A. Yes.

Q. Where were those persons of the name of Munroe standing when you looked over the wall?

A. They were standing before the furnaces.

Q. Did you see them do any thing?

A. No. I saw one of them come and lift something and take it out of the door; I cannot say what it was.

Q. Where did he lift it from?

A. It was lying between the hammers and the furnace.

Q. Was that the place where those flattened files were lying, after being beaten by the hammers?

A. It was a little bit from it.

Q. How far from it?

A. Perhaps about two feet.

Q. You did not observe any thing lying there before he took up this in particular?

A. Nothing that I could see correctly.

Q. Did you observe any thing lying upon the floor at that place previously to his lifting up something?

A. No.

Q. You said M'Devitt was at work at the forge?

A. Yes.

Q. How was he dressed?

A. He had nothing on but his trowsers.

Q. He had his shirt on, I suppose?

A. Yes.

Q. Were his sleeves tucked up?

A. Yes.

Q. He was standing at work at these hammers?

A. Yes.

Q. And did other persons bring him those files before they were put under the hammers?

A. Yes, they were handed to him.

Q. And then they were laid down there?

A. Yes.

Q. And you do not know what became of them?

A. No.

Q. But you say you saw people taking out something of that description out at the door?

A. Yes.

Q. Did I understand you right, when I thought you said you saw some people carrying to the door those things after being flattened?

A. Yes.

Q. Did you see Rowney do any thing?

A. Yes; he was standing by the hammer.

Q. What was he doing?

A. He was laying something up to what they were making, like as if he was measuring them.

Q. Did you see Blair doing any thing?

A. No.

Q. Did M'Devitt appear to you to be working voluntarily, or was there any constraint that you observed?

A. No, there was not that I observed.

Q. How long did you continue in the mill at this time?

A. From eight to ten minutes.

Q. Did you look more than once through this opening?

A. Yes, I looked twice.

Q. And were the same operations going on both times?

A. Yes.

Q. Look at this, and see if they were any things like that that you saw, (*handing three pike-heads to the witness.*)

A. They were nearly of the shape of that; they were the same length.

Q. Were they the same shape?

A. Yes.

Q. You staid there about ten or twenty minutes, and then went away; what time of day was this?

A. About ten o'clock.

Q. When did you return to this mill again?

A. It was about twelve.

Q. Did you look into the forge once more when you came back?

A. Yes.

Q. What was done then?

A. The hammer was still going.

Q. Was M'Devitt still employed there?

A. Yes.

Q. Were the people there as they were before?

A. Yes, the people below.

Q. Could you say that they were the same people that were there before?

A. There were some the same.

Q. Was Lowrie there?

A. I could not say whether it was the first time, or the second time, that I saw Lowrie.

Q. Were the Monroes there at that time?

A. I could not say whether it was the first time or the second.

Q. But you are quite certain it was one or the other that they were there?

A. Yes.

Q. Did you see the regular forgemen there at all?

A. On one of the occasions I saw Robert in the forge.

Q. What was he doing?

A. He was standing with his hands in his pocket.

Q. Is there any grinding-stone near this forge?

A. Yes, there is a small grinding-stone at the back of the forge.

Q. Is there a door that opens from the forge to the place where this is?

A. Yes.

Q. Did you see any persons employed at this grinding-stone, in the course of that day which you have mentioned?

A. Yes.

Q. What time might this be?

A. It would be between ten and twelve; I was just going by, and seed them.

Q. What did you see?

A. I seed them working at the grind-stone.

Q. Were some persons moving the grind-stone?

A. Yes.

Q. Were other persons applying something to the grind-stone?

A. Yes.

Q. What were they;—were they like this?

A. I did not see pikes on the grind-stone.

Q. What did you see?

A. I could not see any thing but people standing round it, and the grinding-stone was going.

Lord President.—You said you saw them applying things to it; what were the things?

A. I could not say.

Q. Were they iron things?

A. I could not say.

Q. Were they grinding their own fingers to it?

A. I do not know.

Q. What were the things they were applying?

A. I do not know.

Q. What did you see?

A. I was at a distance from it.

Q. Then you do not know any thing about it. Take care what you are about.

Lord Advocate.—How far were you from the grind-stone at the time it was going?

A. About forty or fifty yards.

Q. How many people might be about it at this time?

A. There would be about eight.

Q. Were you there at any time this day; did you see this on any other occasion besides this you have mentioned?

A. I was at the malt-kiln after that, and I seed them at the same employment.

Q. You were at the malt-kiln afterwards?

A. Yes.

Q. This is a different time to what you spoke of before?

A. Yes, it was when I was going to the kiln.

Q. Was this the third time you went to the kiln?

A. No, I saw it from the forge the first time.

Lord President.—Are you speaking of the grinding-stone now?

A. Yes.

Q. Did you see them at the grinding-stone again besides that time that you told us of first?

A. Yes.

Lord Advocate.—How long was that after the first time that you saw them?

A. Perhaps twenty minutes.

Q. Were they employed the same way then as they were the first time?

A. Yes.

Q. Were you at the same distance this time as you were the first time?

A. No, I was near at hand.

Q. Is there a window in the malt kiln?

A. Yes.

Q. How far is that window from the grinding-stone?

A. I cannot say the distance; it may be twenty yards, or less.

Q. Did you look out of that window this second time?

A. Yes.

Q. And you saw how many people were then employed about this place?

A. About the same number.

Q. Were they the same individual people?

A. I cannot say.

A. Can you mention any of the individuals who were there upon that occasion?

A. I could not say who was at the grind-stone.

Lord President.—Did you know either of them?

A. No.

Lord Advocate.—Upon neither occasion?

A. No, not that day.

Q. What do you mean by that?

A On Monday I did not see any that I knew.

Q. Did you see no person at the grind-stone on either of those occasions that you knew?

A. No.

Q. Did you see the prisoner Munroe at that grind-stone?

A. No.

Q. Either that or any other day?

A. I seed him the day following that.

Q. Where were you then?

A. I was looking out of the malt-house window.

Q. What was the prisoner doing?

A. He was grinding a chisel iron.

Q. What number of people were about the grind-stone at this time?

A. There were some boys round it.

Q. Were there no men?

A. No, I could not say there were any men, except the two brothers.

Q. Both Robert and George Munroe were there, were they?

A. Yes.

Q. And were there no other men but them?

A. No.

Q. And how many boys might there be about it?

A. There were two or three.

Q. Who was moving the grind-stone?

A. One of the Munroes was turning it, and the other was sharpening the chisel end.

Q. You are sure that it was a chisel end that you saw at this time?

A. Yes.

Q. You say that you saw this chisel end, and you could see it distinctly from the distance at which you were?

A. Yes.

Q. What did you see the day before, when you were looking out of that window?

A. I could not see because the people were standing round it. I could not see what they were doing at the grind-stone, but I saw them standing round it.

Q. And you say, upon your oath, that upon those occasions you did not see them sharpening any instruments of that kind?

A. No.

Q. And you never saw them sharpening pikes any where?

A. No.

Lord President.—Was it a mason's chisel?

A. No, it was a plane iron.

Q. You have told us all along it was a chisel iron, and a chisel and a plane iron are two totally distinct things. Do you know what a plane iron is?

A. Yes.

Q. Was it a plane iron or a chisel iron?

A. A plane iron.

Q. How came you to say all along it was a chisel iron?

A. I mistook.

Lord President.—It is very odd. How could you mistake those two; for two more opposite things than a mason's

chisel and a plane iron do not exist in the works of art, I think.

Q. Did you see, upon any days in that week, any paper posted up any where about Duntochar?

A. I did, upon Sunday the 1st of April.

Q. That is, before what you have been now talking of?

A. Yes.

Q. Where was this posted up?

A. At the gable-end of James Bryson's house.

Q. Did you look what this address was?

A. No, I heard some people who were reading it?

Q. What was it?

Mr Grant.—He heard some people read it, but he did not read it himself.

Lord President.—What he heard read is a fact?

Mr Grant.—What he heard read is a fact, but not as to the contents of the paper.

Lord President.—Certainly not.

Lord Advocate.—Let the witness be removed.

Mr Grant.—I think that will not be insisted on.

Lord Advocate.—What did you hear read?

A. I do not remember any of it.

Q. Do you recollect how it began?

A. It was some people that were going to church that were reading it: I could not say the person.

Q. Did not you read it yourself?

A. No.

Q. Nor any other?

A. No, I was going to church, and was too late, and had not time to stop.

Q. Cannot you give us any account of what you heard?

A. No further than that every public work was to stop.

Q. Repeat what you said?

A. It was about the public works were to stop.

Lord President.—What the man was saying he read?

Lord Advocate.—Was it an order to desire those works to stop, or what was it?

A. Yes.

Lord President.—The man was reading, or saying that he read something, about stopping; he appeared to be reading, and was reading, unless he repeated it falsely.

Lord Advocate.—Do you mean to say that you never read that address, or any part of it?

A. No, I seed it in Dumbarton, when I was examined before.

Lord President.—Then you did not see it again at Duntochar?

A. No.

Lord Advocate.—By whom did this address bear to be given out, did you understand—did you hear the person say?

A. I do not know.

Q. Does it consist with your knowledge, that at any of the works in your neighbourhood, the men struck work at that time?

A. Yes.

Q. What works struck?

A. All the public works.

Q. On what day?

A. On the Monday following.

Lord President.—You mean the manufactories?

A. Yes, the cotton works.

Lord Advocate.—That was the day immediately after you heard that read, was it?

A. Yes.

Q. What state was the town in on that Monday and Tuesday?

A. There were a great number of strangers about the place.

Q. Was there much alarm among the people there?

A. Yes.

Q. How long did this forge continue to go? how many days?

A. I did not see when it stopped—it went upon the Monday.

Q. Did it go upon Tuesday again?

A. I was at Glasgow upon Tuesday; I went to Glasgow at ten o'clock.

Q. Was it going in the morning before you went away?

A. Yes.

Q. What time did you return?

A. It was in the afternoon.

Q. Was it going then?

A. No.

Q. What, on Wednesday?

A. I was at Glasgow on Wednesday likewise.

Q. Was it going in the morning before you went away?

A. No.

Q. Duntochar is in the county of Dumbarton, is not it?

A. Yes.

Q. You came back on the afternoon of Tuesday, and it was not going then, you say?

A. No.

Q. You say this was a powerful forge?

A. Yes.

Lord President.—By saying that you left Duntochar at ten o'clock on Tuesday morning, and that the forge was going,—do you mean, that it was going by its own regular work people, or other people?

A. I could not say; I looked in, but I could not say who it was.

Q. You did not know any of them?

A. No.

Q. But were they workmen belonging to the forge, or strangers?

A. I could not say.

Q. Was Probert there?

A. No.

Lord Advocate.—Who are the regular workmen there—you live next door?

A. There are two James Proberts.

Q. Any body else?

A. Patrick M'Devitt.

Q. Any body else?

A. John Lowrie.

Q. Any body else?

A. No.

Q. None of those four were working there upon the Tuesday when it was going?

A. No.

Cross-examined by Mr Grant.

Q. You have talked about the stopping of work, and that there was a great deal of alarm?

A. Yes.

Q. What employment are you in?

A. I work in the distillery.

Q. Did your distillery stop or not?

A. No.

Q. Did you yourself stop, or had you any intention of stopping your work?

A. No, we intended to work till once we were stopped.

Q. Did you expect, then, that you were to be stopped from working?

Mr Serjeant Hullock.—Is that a question?

Lord President.—You need not object.

Mr Grant.—What do you mean by saying you intended to work till you were stopped? by whom were you to be stopped?

A. It was reported we were to be stopped, but we did not know who was to stop us.

Q. Did any body, in point of fact, attempt to stop you?

A. No.

Q. What distance was the hammer from the place where you were standing?

A. I could not say what distance particularly.

Lord President.—You cannot particularly say how far you are from me, but you may guess within a few yards?

A. Not thirty yards.

Re-examined by the Lord Advocate.

Q. Would it be a greater distance than from you to the wall?

A. It is more.

Q. As far as to the wall at the other end?

A. Yes, as far as from one end of the church to the other.

Q. Do you mean to say, that the length of the forge is so long as this church?

A. Yes, it is longer, I think.

Lord President.—Bulloch, before you leave that box, I have to tell you, that I have a very strong suspicion that you have not told all that you know. By your oath you are bound to tell not only the truth, but the whole truth. You know best whether you have told the whole truth or not.

A. I have.

Lord President.—If you have not, you have to answer for it to Almighty God.

ANDREW ROBERTSON—*sworn.*

Examined by Mr Drummond.

Q. You are an excise officer?

A. Yes.

Q. Were you stationed at Duntochar in the month of April last?

A. Yes.

Q. Is Duntochar in the county of Dumbarton?

A. Yes.

Q. What parish is it in?

A. In a parish called Kilpatrick.

Q. Was it your duty to survey the distillery at that time?

A. Yes.

Q. Whom does that distillery belong to?

A. John Bulloch.

Q. Were you there in the beginning of April?

A. Yes.

Q. Is there a forge in the neighbourhood?

A. Yes.

Q. Whom does it belong to?

A. It belonged at that time to Mr Edington.

Q. A forge mill?

A. I do not know whether it was a mill or not.

Q. Had you occasion to be at that forge the beginning of April?

A. Yes.

Q. Were you there the first Monday of April?

A. Yes.

Q. What Monday in April was that?

A. The first, I think.

Q. What time of the day did you go there?

A. In the fore part of the day—after breakfast.

Q. Did you go into the forge?

A. No.

Q. What place did you go to?

A. I went into a mill adjoining the forge.

Q. Was there any way of seeing from that place into which you went into the forge.

A. Yes; there was a hole at the top of the wall.

Q. And you saw through that hole?

A. Yes.

Q. What did you see?

A. I saw them making what they were calling pikes.

Mr Grant.—It is a common phrase in Scotland, to say, what they were calling.

Lord President.—Were they what you call pikes?

A. Yes.

Mr Drummond.—You saw them yourself?

A. Yes.

Q. What sort of looking things were they?

A. They were long pieces of iron; I fancy a dozen or fourteen inches long.

Q. Was it the same sort of things with this? (*handing the pike-heads to the witness.*)

A. Much the same.

Q. About the same in size and general appearance?

A. Yes.

Q. How many people did you see working at them?

A. I saw just one working, and some boys carrying iron backwards and forwards, between that and the fire.

Q. Saw one man working at what?

A. At those pikes.

Q. What was he doing?

A. He was holding them below the hammer, and boys carrying iron between the fire and the hammer.

Q. How long did you remain there?

A. I was not there passing three or four minutes.

Q. And this business was going on all the time you were there?

A. It was going on.

Q. Did you know the man that was working at the hammer?

A. Yes.

Q. Who was he?

A. Patrick M'Devitt.

Q. Do you see him here?

A. Yes.

Q. Did you see any other people, through that aperture, along with him, working?

A. No; I did not see any working.

Q. Did you see any that you knew?

A. Yes; I saw William Lowrie; he appeared to be looking on; he was doing nothing.

Q. But he was beside the man who was working?

A. Yes.

Q. Do you know any body else that you saw?

A. No.

Q. Did you know any of the boys?

A. No.

Q. How was M'Devitt dressed; had he any of his clothes off?

A. He appeared to me to have his waistcoat off; if he had it on, it was a light one.

Q. Who was along with you when you were looking through this place?

A. John Bulloch the younger.

Q. Anybody else?

A. No; there was no other person at that place besides.

Q. Was there a number of those things that they were working at?

A. I could not tell that exactly.

Q. How many might you see?

A. I could not tell the number. May be half a dozen, or thereabouts; I did not look particularly to that.

Q. Was Bulloch there when you went; or did he go there along with you?

A. He was there when I went; and I went in and stood there along with him.

Q. Did he look through the hole too?

A. Yes.

Q. Did you leave him there; or did he come away with you?

A. I left him there.

Lord Justice-Clerk.—You left him there, still looking through this hole?

A. Yes.

Mr Drummond.—Did you go back again after that time?

A. No, I did not.

Q. Is there a grind-stone near that place?

A. Yes; there is a grind-stone at the side of the water there.

Q. Were you near that grind-stone in the course of that day?

A. No; I was not nearer than the distillery, or the bridge by it.

Q. You were in sight of the stone?

A. Yes.

Q. Did you see anybody about it?

A. Yes.

Q. What time was this?

A. Sometime after that.

Q. An hour or two?

A. Yes.

Q. What were the people about the stone doing?

A. They were grinding those pieces of iron apparently.

Q. Those same kind of things that you saw at the forge?

A. Yes.

Q. How many people might there be about the stone?

A. About four or five.

Q. Did you know any of them?

A. No, I did not.

Q. Was any person along with you at the time?

A. Yes.

Q. Who?

A. There was Thomas Graham.

Q. Who is Thomas Graham?

A. One of John Bulloch's workmen, and John Bulloch the younger, and Robert, and Lang; and no other that I recollect of at present.

Q. You saw the pikes distinctly?

A. Yes.

Q. You are sure it was the same kind of thing you saw before?

A. Yes.

Q. At that time that you were there with Bulloch?

A. Yes.

Lord Justice Clerk.—Did you see more than one ground at the stone at that time?

A. No; I did not stand passing a minute or two there.

Q. A day or two after that, had you occasion to go to the forge again?

A. No; after that, I did not go back at all.

Q. Not that day, but afterwards?

A. After that day, I did not go back at all.

Q. This was the Monday that you told me about?

A. Yes.

Q. Are you sure you were not there upon the Tuesday?

A. No, I was not.

Q. Is there a corn-mill near that place?

A. Yes.

Q. Were you there upon the Tuesday?

A. No; I was not within the mill-door.

Q. Or the Wednesday?

A. Nor the Wednesday either.

Cross-examined by Mr Grant.

Q. You were only a minute or two at this grind-stone?

A. Yes; about a minute or two looking at the stone.

Q. How do you know what they were grinding?

A. They were grinding, to appearance, those things I said they were making in the forge.

Q. How far were you from the grind-stone?

A. I fancy it might be about forty or fifty yards.

Q. Could you see distinctly what they were grinding upon the stone, over the people's heads that were there?

A. I could see that they were grinding those things that I said before.

Q. Could you see over the people's heads what they were doing?

Lord President.—It does not follow that it was over people's heads; he might see between them.

Mr Grant.—I am aware of that. Did you hear what I said?

A. Yes.

Q. Could you see distinctly?

A. Yes, I could.

Q. You say you did not know anybody who was there?

A. No, I did not—no person at the time.

Q. And you were there only one or two minutes?

A. Yes; two or three minutes at the furthest.

Lord President.—You should weigh these cross-questions very well. If you had left it that he was forty yards off, the argument would have been fair for you.

Mr Grant.—I am satisfied with it as it stands.

Lord President.—I am Counsel for the prisoner as well as you.

Mr Grant.—I have received such instructions as I think it is my duty to be bound by.

Lord President.—Then pursue your own course.

JOHN ANDREW—*sworn.*

Examined by Mr Maconochie.

Q. You are a carter at Duntochar?

A. Yes.

Q. Do you know Mr Bulloch's corn-mill at Duntochar?

A. Yes.

Q. Were you there in the beginning of April last?

A. Yes.

Q. What day of the week was it you were there?

A. On Monday.

Q. Was that the first Monday in April?

A. I think it was.

Q. What time in the morning did you go there?

A. I could not say rightly. About ten or eleven o'clock.

Q. What did you go there for?

A. I go there repeatedly, to buy some dust and meal for my hogs.

Q. When you went there, was the forge adjoining to the mill going?

A. I could not positively say whether it was going or not when I went to the mill; but after I went into the mill, I am sure it was going.

Q. Who was in the mill when you went to it?

A. Young John Bulloch, and the miller.

Q. What is his name?

A. John M'Donald.

Q. Was a man of the name of Robertson there?

A. He came in, I think, after me.

Q. Did you look into the forge when you were there?

A. Yes.

Q. How did you look in?

A. We looked in at a little hole, between the forge and the mill.

Q. Between the wooden part of the partition, and the stone part of it?

A. Yes.

Q. What made you look in?

A. I heard the noise that they were making; and I did not know what it was; and I was curious to see what it was.

Q. What did you see?

A. I seed different ones in the forge.

Q. Did you see any body that you knew?

A. I seed a few that I had seen before.

Q. What were their names?

A. I seed the one M'Devitt who works at the forge.

Q. Did you see him? (*M'Devitt.*)

A. Yes.

Q. Did you see any body else?

A. I saw Lourie the Irishman.

Q. Any body else?

A. M'Kinlay came in.

Q. Any others?

A. I saw several—I could not name them.

Q. Were these all the people whose names you know.

A. I do not remember any more.

Q. What were they doing?

A. I could not say positively, I had a sore leg at the time, and could not look long at once.

Q. What was M'Devitt doing?

A. The forge was going, and he was turning in something below the hammer to my view.

Q. What sort of a thing was it?

A. It appeared to me like to be a long thing, may be about a foot long or thereaouts.

Q. And how broad might it be?

A. I cannot say, it might be from an inch and half to two inches.

Q. Was it any thing like that—an iron? (*handing a pike-head to the witness.*)

A. It was not polished off like that.

Q. Was it of the shape of that?

A. Yes, it was the same shape as that; I cannot say positively what they were, (*another pike-head was handed to the witness*) something similar to this; I could not say positively, for it was a great distance.

Q. Had M'Devitt his coat on?

A. No; his coat was off.

Q. You say you had a sore leg, and could not look long at a time, did you look in more than once?

A. Yes, twice.

Q. And they were going on with the same operation?

A. Yes, much about it.

Q. Do you know where they put the things when they made them?

A. I saw some of them lying on the floor between the forge and the furnace.

Q. How many people were there in the forge about that time?

A. I could not really say.

Q. Were there any boys?

A. Yes, I think there was.

Q. How many?

A. I could not say, there might be two or three; I saw a great number of boys and men in, but I could not name them.

Q. Would there be twenty people?

A. No, I do not think there were.

Q. What may be the length of the forge?

A. I could not really say; it may be fifty or sixty feet, or it may be more.

Q. Is it as long as this church?

A. It is longer, I think it was.

Mr Grant.—I think we have it in evidence that the witnesses were at one end of the forge and the men at the other.

Lord President.—I understand so, as they asked to the length of the forge; if they had meant the breadth, they would have asked to the breadth of it; they have never said so.

THOMAS INGLIS—*called.*

Mr Sandford.—My Lord, this witness is described "Tho-"mas Inglis of and residing at Duntochar, in the parish of "West Kilpatrick, and County of Dumbarton, labourer." The witness, as I am informed, does not reside at Duntochar, in the parish of Kilpatrick, but resides at a place called Carbowie, a considerable distance from the place described; that the fact is, that he left that residence so long ago as Whitsunday last, so that at the time this notice was served upon us, that was not his description; before going any further, perhaps your Lordships will permit me to ask the witness—Where do you reside?

A. In Carbowie.

Lord President.—How long have you resided there?

A. Since Whitsuntide.

Q. How far is Carbowie from Duntochar?

A. About a mile.

Q. Is that a village?

A. Yes.

Q. What parish is it in?

A. Old Kilpatrick.

Q. Is that the same parish as West Kilpatrick?

A. Yes.

Q. But a different village?

A. Yes.

Q. Not the same village as Duntochar?

A. No.

Mr Hope.—Have you lived at Carbowie all the time since Whitsunday?

A. Yes.

Q. Have you a house there?

A. No.

Q. Whom do you live with?

A. James M'Lean.

Q. Has he a house in Carbowie?

A. Yes.

Q. And you have lived there since Whitsunday last constantly?

A. Yes.

Lord President.—You have not been lately living at all in Duntochar?

A. No.

Mr Hope.—With whom did you live in Duntochar?

A. John Bulloch.

Lord President.—You have not lived with John Bulloch since Whitsunday?

A. No.

Lord President.—That will not do.

JOHN M'DONALD—*sworn.*

Examined by Mr Hope.

Q. Are you employed about the mill at Duntochar?

A. Yes.

Q. Mr Bulloch's mill?

A. Yes.

Q. Had you occasion to be there in the beginning of April last?

A. Yes.

Q. Is there any other building adjoining to that mill?

A. The kiln adjoining to it.

Q. Is there a forge?

A. Yes.

Q. Mr Edington's forge?

A. Yes.

Q. Did you, at any day in the beginning of April, observe any thing particular going on at that forge?

A. Yes.

Q. What day was that?

A. Monday.

Q. What day in the month of April—was it the first Monday in April?

A. Yes.

Q. Where were you at the time that you had occasion to observe something going on in the forge?

A. Inside the mill.

Q. Inside Mr Bulloch's mill?

A. Yes.

Q. How is the mill separated from the forge?

A. It is adjoining to the forge, close to the wall of it.

Q. Can you see through any part of that wall?

A. Yes.

Q. And were you, upon that occasion, looking through an aperture in the wall?

A. Yes.

Q. Was there any person with you at the time?

A. None.

Q. About what hour was it on Monday?

A. About eleven o'clock.

Q. Were you looking through one of the side walls of the mill, or through one of the end walls of the mill?

A. Through the side wall.

Q. Whereabouts is the furnace and the hammer in that mill situated?

A. Towards the west end of it.

Q. How far might that be from the place where you were upon that occasion?

A. It was about forty or five-and-forty yards?

Q. What did you observe, when you were looking through the wall?

A. I seed a good number of people collected in the forge.

Q. How many people might there be, do you know?

A. There might be from ten to fifteen.

Q. What were those people doing?

A. I then seed Paddy M'Devitt working at the hammer.

Q. Do you see him here now?

A. Yes.

Q. In what way was he working at the hammer?

A. He was holding some iron below it.

Q. How is that hammer worked, by the hand, or by machinery, or by water?

A. By water.

Q. Is it a large hammer?

A. No, it is not a very large one, there is one in the forge that is larger than that a good deal.

Lord President.—It is a hammer that weighs some hundred weights?

A. Perhaps a hundred and a half, or more.

Mr Hope.—Does it work very rapidly?

A. Yes.

Q. You saw M'Devitt holding some iron under this hammer?

A. Yes.

Q. Do you mean by that, one piece, or more than one?

A. I saw him holding two or three below it; I could not see the face of the hammer, but I saw the man himself working at it.

Q. What sort of pieces of iron were they?

A. They were long small pieces of iron.

Q. What did they resemble before they were put under the hammer?

A. Old files.

Q. Do you mean to state that they merely resembled old files, or that you saw them at the time to be old files?

A. Yes, they were old files.

Q. Did you observe how M'Devitt got those files?

A. No.

Q. Did persons bring them to him?

A. I seed a number of people, and they were collected in the forge, and they were carrying the files to him out of the furnace.

Q. Then the files were first in the furnace, and people carried them from the furnace to the hammer, where M'-Devitt was?

A. Yes.

Q. Did many people appear to be employed in carrying the files from the furnace to the hammer?

A. Yes, there were a good many of them employed.

Q About what number?

A. Four or five.

Q. When those pieces of red-hot iron were carried to M'Devitt at the hammer, what was done with them then?

A. He held them down under the hammer.

Q. What was done with them under the hammer—were they beat and flattened?

A. Yes, they were flattened.

Q. And then after being flattened?

A. They were laid down upon the floor.

Q. How long did you observe this operation going on?

A. About five or ten minutes.

Q. Did those old files remain long under the hammer, or were they just introduced, and taken away quickly?

A. They were taken away as soon as they were ready.

Q. Did that last long, or were they flattened very quickly?

A. They were flattened very quickly.

Q. Then as soon as one was flattened, did M'Devitt receive another?

A. Yes.

Q. How many do you suppose he might receive during those five or ten minutes; about what number might there be; ten or more?

A. I do not think there were so many as ten; two or three.

Q. Was M'Devitt fully dressed at the time?

A. No.

Q. You mentioned the number of people that were in the forge at the time; do you know any of those other persons?

A. Only one, the others were all strangers.

Q. What was his name?

A. William Rowney.

Q. Did you look into the forge oftener than once on that day, the Monday?

A. Only once.

Q. Is there any other shop belonging to the forge?

A. Yes.

Q. What is that?

A. It is what they call the spade-finishing shop.

Q. Is that the place where articles of iron, heated and flattened, or beaten in the forge, are finished off?

A. It is where the shovels are finished.

Q. Are they ground there?

A. No.

Q. Where are they ground?

A. Shovels are not ground.

Q. Is there any grinding-stone in that finishing-shop, or behind it?

A. There is one behind it.

Q. Had you an opportunity of seeing any thing about that grinding-stone upon that same day, the Monday?

A. No.

Q. Did you see the grinding-stone upon either the Tues- or the Wednesday?

A. The grinding-stone is always standing there.

Q. Did you see it on Tuesday or Wednesday?

A. Yes.

Q. Did you see any person working at it?

A. No.

Q. Neither upon Monday, Tuesday, or Wednesday?

A. Neither upon Monday, Tuesday, or Wednesday.

Q. Do you know a person of the name of William Blair?

A. Yes.

Q. Did you see him about the forge either of those two days?

A. No, I did not see him in the forge.

Q. About the forge?

A. I did not see him in the forge.

Q. Did you see him about the forge?

A. I saw him in the finishing-shop.

Q. What was he doing there.

Mr Grant.—Ask whether the prisoner was present: this is a question as to what this person Blair was doing. I submit they cannot ask that question without they connect the prisoner at your Lordship's bar with Blair, in some way or other, which they have not yet done.

Lord President.—Blair was at the forge at the same time with M'Devitt.

Mr Grant.—They have not proved any connexion with Blair yet, and therefore, they ought to prove first some connexion with Blair, and then we may know what Blair did.

Lord President.—That is the regular way, certainly.

Mr Serjeant Hullock.—It is only calling him back again.

Mr Grant.—I am perfectly well aware, that if this evidence was given, it would be nothing to criminate my client, but I think it better to object, to save confusion.

Mr Hope.—We will have that witness re-enclosed at present.

Mr Serjeant Hullock.—We shall recall him by and by.

Mr Grant.—I have no question to ask him upon what he has been examined to.

JAMES M'ILQUHAM—*sworn.*

Examined by Mr Serjeant Hullock.

Q. Where were you working in the beginning of April last?

A. When did it come in?

Lord President.—You should know that yourself.

Mr Serjeant Hullock.—Were you working at Faifley paper-mill in April last?

A. Yes, I was.

Q. Were you working there in the beginning of the month of April?

A. No.

Q. When did you give over working there?

A. I gave over on Monday morning.

Q. Was that the first Monday or the second Monday in April?

A. The first.

Q. Do you remember the day of the month?

A. It was the third day.

Q. Did you go to your work on that morning with a view to begin work?

A. Yes.

Q. How many men were there at your mill, working men, about how many?

A. Seven or eight.

Q. Are you an apprentice there?

A. Yes.

Q. How long have you been in the mill?

A. Five years past.

Q. About what time on the Monday morning did you go to work?

A. Between six and seven.

Q. Was that your usual time?

A. Yes.

Q. Did all the men go to work that morning?

A. No.

Q. You went for the purpose of beginning work?

A. Yes.

Q. Did you begin work?

A. Yes, I did.

Q. How long did you work?

A. About twenty minutes.

Q. Did you give over working then?

A. Yes.

Q. Did you leave any person working there when you gave over? did any of them continue to work after you ceased to work?

A. No, I do not think there were any working after I left off, except the master and the foreman.

Q. You mean none of the working men? do you call them journeymen?

A. Yes.

Q. Did any of the journeymen continue to work after you gave over working?

A. Not that I saw.

Q. Did they go away, or did they stay there?

A. I do not know where they went.

Q. What became of you?

Mr Grant.—I have no desire to interrupt my learned friend in any inquiry he thinks right, but it must be evident to your Lordship that we have no connexion with this Faif-

ley mill at all, nor have they connected us with any body; there is no charge about the paper mill.

Lord President.—It was to stop all works, and one man has sworn to the proclamation to stop all works.

Mr Grant.—I know it cannot affect me if the Jury keep it distinct; if a conspiracy is charged, I do not know what may not be proved; but the right way is to shew it had some connexion with the prisoner at the bar.

Lord President.—The proper way of proceeding is, first, to shew there was a conspiracy to stop work; then that it was stopped at a variety of works, and then, if they do not connect you, it goes for nothing; but some of the facts must precede the others, and they cannot connect you with what they have not previously proved.

Mr Grant.—They are now proving the stopping of work; they have not proved a conspiracy any where to stop work; but they are proving the fact of working being stopped.

Lord President.—They may begin with either, if they merely prove that they stopped work, and do not prove it was from a conspiracy, it goes for nothing; they must prove both, but they must begin with one or the other.

Mr Grant.—Very well, my Lord; the course of examination is competent to them, I know.

Mr Serjeant Hullock.—You quitted work, did you, that morning?

A. Yes.

Q. When did you return to work?

A. I returned to work on Friday.

Q. On the Friday following?

A. Yes.

Q. Was there no work from the Monday to the Friday carried on at your paper mill?

A. None that I know of.

Q. Were the men idle during that time?

A. Yes, I believe the journeymen were idle.

Q. Did you see any of them during that time,—on the Tuesday, Wednesday, or Thursday, for instance?

A. Yes.

Q. What were they doing during that time, when you saw them?

A. Doing nothing.

Q. You were employed in doing nothing, were you, during that time?

A. Yes.

Q. Did you ever see any papers posted up about your town, or Duntochar, or Faifley?—is Faifley a village?

A. Yes, it is a small village.

Q. Did you see any papers posted up?

A. Yes, one.

Q. Did you see more than one?

A. There was but one put up, that I can positively say.

Q. But you can positively say to one?

A. Yes.

Q. Where was it stuck up?

A. At the end of a house.

Q. At the end of whose house?

A. James Bryson's.

Q. What is James Bryson; does he keep an ale-house?

A. He keeps a public house.

Q. Is that a place at which advertisements and things of that sort are usually posted up? did you ever see any other papers before that against Bryson's house?

A No.

Q. How high was it from the ground?

A. I cannot exactly say how many feet it was high.

Q. Could you read it when it was against the wall?

A. Yes, I read pieces of it.

Q. Where is this house of Bryson's—what place is it at? at what village?

A. Next to Faifley.

Q. Is it at Glenhead?

A. No.

Q. Did you ever see a paper upon Glenhead?

A. No, I cannot exactly say to that.

Q. Let us see whether you can?

A. I do not recollect it.

Q. You do not mean to state upon your oath you never saw any other paper than that which was against Bryson's house?

A. Yes, I saw one in the possession of a person.

Q. Do you mean in his hand?

A. Yes.

Q. Did he shew it to you?

A. Yes.

Q. Did you read it?

A. Yes.

Q. When was it that you first saw the paper upon Bryson's house?

A. On the Sabbath morning.

Q. That would be the day before you went to work, between six and seven in the morning?

A. Yes.

Q. What time of the Sabbath morning might it be—when you were going to church, or before that time?

A. Between seven and eight in the morning.

Q. Were there several people reading it when you saw it?

A. Yes.

Q. Did you know them, or any of them? did you know the names of any of them?

A. Yes.

Q. Tell us the names of some of them.

A. There was one David Campbell.

Q. Were any of those persons there that you see here?

A. No.

Q. You never saw them about that place while you were reading the paper—any of them.

A. No.

Q. You say that you read part of the paper yourself, did you?

A. Yes.

Q. How did it begin?

Mr Grant.—I apprehend—

Lord Advocate.—Let the witness be removed.

Mr Grant.—I do not know that that is necessary, but I have no objection to it. I think the witness hearing an ar-

gument whether the paper is to be produced or not, can do no mischief. (*The witness was removed*) The witness has said nothing more than this, I saw a paper in a man's hand.

Lord President.—He saw it against a house.

Mr Grant.—Yes, he says I could read it, and I read pieces of it. I saw a paper in a man's hand, I saw a paper posted against Bryson's house, and read part of it; none of the prisoners were there. Now, I understand my learned friend's question to relate to the paper he saw in the man's hand.

Mr Serjeant Hullock.—No; my question was,—(when he saw that paper against the house.) He said I read pieces of it, and I want to know what he read.

Lord Justice-Clerk.—Of the papers so posted up?

Mr Serjeant Hullock.—Yes.

Mr Grant.—Then, my Lord, I am under a mistake. I understood it was the paper he saw in the hands of another person. I understood the man said he read the paper in the man's hand.

Mr Serjeant Hullock.—He did so; but I asked him no questions about it.

Mr Grant.—That was what misled me.

The witness was again brought into Court.

Mr Serjeant Hullock.—I understood you to say, (you will tell me whether I am mistaken or not,) that you read part of the paper posted against the house of Mr Bryson—that is so?

A. Yes, I read part of it.

Q. Did you read the beginning of it?

A. Yes, I did a bit.

Q. Repeat to us, as near as you can, the first bit you read.

A. I am not in mind of it just now.

Q. You do not remember it, do you?

A. No.

Q. Did you read it oftener than once?

A. Yes, I might read it more than once?

Q. Did you read it oftener than once?

A. Yes.

Q. Tell us how it began. To whom was it directed?

A. I do not know; I did not mind about that; I cannot tell which way it began.

Q. Tell me which way it ended, then.

A. I cannot tell that neither.

Q. Look at these gentlemen, will you now. I ask you, upon your oath, if you mean to swear that you have forgot every word of that paper that you so read several times I ask you upon your oath, and you will just swear what you like?

A. Yes, I have.

Q. Have you forgotten every word of it?

Lord President.—Do you mean to say you have forgotten the exact words of it, and the meaning of it?

Lord Chief-Baron Shepherd.—You know you are sworn to speak the whole truth.

Lord President.—Here is a paper you saw oftener than once, and you can neither say the words or the meaning of it; or at least you have not yet told us—recollect yourself—you have not told us by whom it was signed, nor to whom it was addressed, nor any thing.

A. It was addressed to the inhabitants of Great Britain and Ireland.

Mr Serjeant Hullock.—It was addressed to the inhabitants of Great Britain and Ireland?

A. Yes.

Q. Go on; we are in no hurry here.

Lord President.—Any thing more? What did it tell to the inhabitants of Great Britain and Ireland?

A. That the works were all to be stopped.

Q. Anything more?

A. I do not mind of anything more.

Mr Serjeant Hullock.—Did they say why they were to be stopped? What purpose was there in stopping the works?

A. I do not know, I am sure; I did not mind.

Q. Did it say for what purpose?

A. I could not say.

Q. Will you swear that you cannot say?

A. Yes.

Q. How did it end? What was the concluding part of it, do you remember?

Lord President.—By whose order did it bear to be published?

A. I do not know, I am sure.

Q. By whose order did it bear to be signed or published?

A. I do not know.

Q. I do not ask whether you know; but what did the paper say? It was an Address by some person or another, or by some pretended person or another; and desired all the works to be stopped. Who appeared to do all that? By whose order was all this said to be done? I dare say you do not know who the people were. What did the paper say? Your work stopped accordingly; do not you know by whose order you did this?

A. The works were left of our own-accord.

Q. Why did you leave off of your own accord? What made you do it?

A. Because I seed the rest do it.

Mr Serjeant Hullock.—You had seen the Address, whatever it contained, before you left work—you saw it on the Sabbath morning?

A. Yes.

Q. And you left work on the Monday morning?

A. Yes.

Q. Did you leave work in consequence of what you read in the Address?

A. No.

Q. Give me your reason why you left off work?

A. I left off work, because the rest did it.

Q. Why did the rest leave work?

A. I do not know.

Lord Chief-Baron Shepherd.—Do you mean that you, an apprentice, worked merely because the journeymen did?

A. Yes.

Lord President.—You were bound to different things from the journeymen. There was no reason for your leaving work because the journeymen did.

A. I could not work if there was nobody to work with me.

Q. There was the foreman and the master?

A. They did not work at the same work as me.

Mr Serjeant Hullock.—Did your master and the foreman know you were going to leave work that morning?

A. No.

Q. Did they desire you to stay and continue your work?

A. No; they did not tell me to stop, nor to go.

Q. They said nothing to you?

A. No.

Q. They took it as a mere matter of course, your going away, and other people?

A. Yes.

Q. Do you know Duntochar forge?

A. Yes, I have seen it.

Q. You have known it ever since you went there—have you not, man?

A. Yes.

Q. What did you mean by saying you had *seen* it then? I shall move to have you committed just now; perhaps that may bring you to your senses, and bring the truth out of you. Did you go to that forge any time on Monday?

A. Yes.

Q. Who was with you?

A. Daniel M'Dougall.

Q. What time did you go?

A. I went between one and two o'clock.

Q. What made you go there, pray?

A. To see what was going on.

Q. When you got there, did you see what was going on?

A. Yes.

Q. Tell us, then, what was going on when you got there?

A. I saw some men going through the forge.

Q. Were they making a passage through it, walking in at one door, and out at the other?—what were they doing—what were they about?

A. Some were doing one thing, and some another.

Q. What were they doing, the men that you saw?

A. Some was working with the hammer.

Q. Do you mean the hammer in the forge?

A. No, not the hammer in the forge.

Q. What hammer was it they were working with?

A. A small hand-hammer

Q. The large hammer was not going perhaps?

A. No.

Q. Who was working with the small hand-hammer?

A. William Blair.

Q. What was he doing with it?

A. Beating old iron.

Q. Was it heated?

A. Yes.

Q. What sort of things was he making by that beating the iron? What form was he beating it into?

A. He was beating it into a long small thing.

Q. What sort of a thing was it? Think you, if you saw such a thing as that now, could you tell us whether it was like that or not?

A. Yes.

Q. Just look at these long small things. (*Two pike-heads.*)

A. Yes, they resembled that.

Q. How many persons were there there?

A. I could not exactly say.

Q. About how many?

A. There appeared to me to be about nine or ten.

Q. Did you know any of their names besides Blair?

A. No, not but one.

Q. Tell us that one?

A. Patrick M'Devitt.

Q. What was he doing, pray?

A. Beating old iron too.

Q. Were both he and Blair beating old iron?

A. Yes.

Q. What is Blair? Is he a blacksmith, or a cotton-spinner?

A. He is a cotton-spinner.

Q. How long did you stay there at that time?

A. Half an hour.

Q. During the time that you staid there, did M'Devitt

and Blair continue to work, in the way that you have been mentioning, at this old iron?

A. Yes; they went away before I went.

Q. Did they work at several, or only made one of those long sharp things?

A. I could not say whether they made more than one or not.

Q. What sort of iron did that appear to be that they were hammering at—what was it like?

A. It appeared to be old steel.

Q. What were the other men doing all this time?

A. Going through the shop?

Q. In what way—had they anything in their hands?

A. No, nothing; some might have something.

Q. I am asking you whether they had, or had not, any thing in their hands?

A. Some had, and some had not.

Q. Those that had something in their hands, what was that something?

A. Such a thing as that. (*A pike-head.*)

Q. How many of them had such a thing as that in their hands?

A. I could not exactly say.

Q. Three or four, perhaps.

A. Yes, there might be that.

Q. Were there that number?

A. Yes, there was.

Q. Did you get anything of that sort when you went away?

A. Yes, I got an old broken one to grind.

Q. An old broken what?

A. An old broken thing like that.

Q. What do you call it?

A. I do not know what name it had.

Q. What did you call it, then; or what did the persons call it who gave it you?

A. I heard some persons calling it a pike.

Lord President.—Did it require some persons to tell you

what a pike was? Had you no notion yourself what a pike was?

A. No; I never had seen any.

Mr Serjeant Hullock.—But you had heard of several before that?

A. I heard of them.

Q. Did you go to that part of Duntochar after dinner that day? Do you know James Clarke?

Q. No.

A. Do you know Henry Clarke, who has a grinding-stone there?

A. No.

Q. Whose grinding-stone is it?

A. William Clarke's.

Q. Did you see that grinding-stone at any time after dinner on the Mond ay

A. Yes.

Q. At what time in the afternoon?

A. Between four and five o'clock.

Q. What did you go to that grinding-stone for?

A. I went for nothing.

Q. Did you succeed? What did you do when you got there?

A. I did nothing.

Q. And there was nobody there?

A. Yes, there was somebody there.

Q. How many persons were there when you went?

A. I cannot exactly say; there were a good many.

Q. Were there eight or ten persons?

A. No; there were not so many as that.

Q. How many were there?

A. Five or six.

Lord President.—Why could not you have told us that at once—are we to wait here till you think in that manner—cannot you tell us at once as well as at last?

Lord Justice-Clerk.—He is not thinking, my Lord; he is quite aware of the answer at the time the question is put.

Mr Serjeant Hullock.—What were the persons doing at the grinding-stone at the time you went there?

A. They were grinding.

Q. What were they grinding?

A. They were grinding old iron.

Q. What was the shape of the old iron they were grinding?

A. It was the shape of that. (*A pike head.*)

Q. Were they grinding pike-heads?

A. Yes.

Q. Did you carry yours there?

A. No.

Q. What did you do with yours?

A. I gave it to James Drummond.

Q. You say you did not return to your work until Friday; how far is Duntochar or Faifley from Paisley?

A. Seven or eight miles.

Q. The mill at which you work is seven or eight miles from the town of Paisley?

A. Yes.

Q. Upon what day of that week were you at Paisley?

A. On Wednesday.

Q. What business had you at Paisley?

A. None.

Q. But you went to Paisley?

A. Yes.

Q. How long were you there—what time of the day did you get there—and what time did you leave the town again to return home?

A. I was there at five o'clock.

Q. You went then to walk home?

A. Yes.

Q. How many hours, or what length of time, might you be in the town of Paisley, before you set out upon your return?

A. About two hours.

Q. Was the town perfectly quiet?

A. I do not understand you.

Q. Were there any persons in the streets?

A. Yes.

Q. Were there a great number?

A. Yes, there were a good deal.

Q. Were they weavers, or what sort of people were they, that you saw in the streets?

A. I do not know, I am sure.

Q. You had been at Paisley before, I suppose?

A. Yes.

Q. Was there any difference in the number of people you saw in the streets at the time you have been mentioning, and the times you had been at Paisley before.

A. I had been there at a fair.

Q. Setting aside the fair, were there as many people on the Wednesday there, as you had seen at the fair at Paisley?

A. I saw a good deal of people.

Q. Were the streets like a fair?

A. Yes.

Q. But it was not a fair, was it?

A. No.

Q. Nor a market, perhaps?

A. No.

Q. Where did all those people come from, think you, then?

Mr Grant.—How can that be asked?

Mr Serjeant Hullock.—What sort of people were they?

A. I do not know, I am sure.

Q. Were they men, or women?

A. There were both.

Q. Did you see any soldiers?

A. Yes.

Q. Where were the soldiers?

A. They were down the road as you go to Glasgow, down the town. I do not recollect the name of the place.

Q. Were they horse or foot?

A. Horse.

Q. Do you know a person of the name of Lowrie?

A. Yes.

Q. Did you see him at the forge on Monday?

A. Yes.

Q. Does he belong to the forge?

A. Yes, I believe he does.

Q. What situation is he in there? What place has he about the forge?

A. Looking after the fires.

Q. He is the fire-maker and the fire-mender?

A. Yes.

Q. What was he doing?

A. He was doing nothing.

Q. Did you make any observations about Lowrie at the time; what was he about?

A. He was standing still at the forge.

Q. I think you say you saw M'Devitt there, and Blair?

A. Yes, I seed them that day.

Q. Did you see them that day at the forge?

A. Not in the forge.

Q. Do you mean to swear that?

A. They were in the spade-finishing shop—I seed them.

Lord President.—Why did not you tell that before? for we have all taken it down, that that was in the forge. We have never heard of the finishing-shop from you before.

Mr Serjeant Hullock.—You told me that you saw M'Devitt hammering with a small hammer, I think?

A. Yes.

Q. Where was that—in the forge?

A. It was in the spade-finishing shop, close by the forge.

Q. Then you mean to swear you never saw M'Devitt in the forge at all?

A. Yes.

Q. Then the hammering you have been speaking of was going on in the finishing-shop—was it?

A. Yes.

Q. Who was hammering besides M'Devitt—Blair?

A. Yes.

Q. Had M'Devitt and Blair their clothes on, or had they their coats off?

A. They had their coats off.

Q. Who carried the iron to them to be beat with this hammer.

A. I do not know, I am sure, who carried it.

Q. It did not go by itself, you know.

A. I cannot tell their names.

Q. How many persons might there be employed in that way?

A. I saw none employed in carrying the iron to them.

Q. Who did carry the iron to them?

A. I do not know.

Q. Who took the iron away when it had been properly hammered?

A. A man who was in the spade-finishing shop.

Q. Who was it?

A. I do not know.

Lord President.—James M'Ilquham, I have to tell you, that I strongly suspect, and so, I dare say, does every person who has heard you, that you have not told the whole truth here, which you were bound by your oath to do. If that be the case, it is between God and you at the day of judgment.

A. I have told the whole truth, my Lord.

Lord President.—Very well; you know that best.

JAMES PROBERT—*sworn.*

Examined by the Lord Advocate.

Q. What are you?

A. A foreman.

Q. Where?

A. At Duntochar.

Q. At Mr Edington's?

A. Yes.

Q. Is that a powerful forge?

A. No; it is a very weak forge.

Q. What does it consist of?

A. It consists of two hammers.

Q. Does it go by steam, or by water, or how?

A. By water.

Q. Do those hammers move fast?

A. The one goes about fifty-six blows a minute, and the other will run about sixty.

Q. What is the weight of those hammers?

A. There is one of them four and a half hundred, and the other is four hundred weight.

Q. Does the same machinery drive the bellows as drives the hammers?

A. No.

Q. How does it go?

A. It goes by water by itself.

Q. Do you recollect any thing occurring in particular at your forge, in the beginning of April last?

A. There was a rumour, and that.

Q. Did nothing happen there? Were you never interrupted in your work there any morning?

A. No; I went to my work as usual; but my boy did not come forward, and I retired into the house.

Q. What day was that?

A. That was on the Monday.

Q. You went on the Monday morning to your work?

A. Yes.

Q. Was any body else in the forge but you?

A. There was none in at that time.

Q. Did any other workmen come there while you were there?

A. No.

Q. Did no persons come to your forge before you left it?

A. There were two men came.

Q. What did those men say they wanted?

A. They axed me for two old files.

Q. What did those men say they wanted?

Mr Grant.—I submit we are entitled to know first, whether he knows who they were.

Lord Advocate.—I will ask him that. Did you know those men?

A. No.

Q. What did those men say they wanted?

A. They asked me for two old files.

Mr Grant.—I do not know that this is evidence.

Lord Advocate.—The witness must be removed.

(*The witness was removed.*)

Mr Grant.—Two men came, whom the witness does not know, and then we are to have what they asked; it was on Monday morning. He says he did not work, because his boy did not come forward.

Lord President.—None of the rest of the people came.

Mr Grant.—But two men came; and then we are to be told what these men came for. If your Lordship is of opinion that is a competent question, I shall not argue it.

Lord President.—It may, or may not be; it does not bear upon you; but it may be followed up; they cannot prove their whole story at first.

Lord Chief-Baron Shepherd.—On Monday morning two persons came. It is the same morning when the other persons prove that some of the prisoners came.

Mr Grant.—We will take it that there is evidence to go to the Jury, that it was the same.

Lord Chief-Baron Shepherd.—Certainly. What two men might come and say at this forge, appears unconnected; but the circumstance of two persons coming to the place where the prisoners are proved to be, is a fact to connect them, though they are not there themselves. Two men came there, and desired the person at the forge to do something or other; that is admissible evidence.

Lord President.—It may seem to have very little effect, but there is nothing improper in it.

Mr Grant.—I submit, where evidence is desired to be given of what persons said, who are either already proved to be in a combination or undertaking of some kind or other, with the prisoner at the bar; or with regard to whose being connected with him, evidence is hereafter to be given, it is always the course, I understand, to inquire first who the people were. If the witness cannot tell who they were, it has been allowed, and it was so in Hardie's case, for the witness to say what was said by the company, by way of

shewing what were the sentiments of that company, with which the prisoner was to be, or had been connected; but I am not aware of any case where it has been held that you are entitled to ask, where the witness cannot tell who the people were who came there, what they said or did, because your Lordship will observe the difficulty in which the prisoner is placed; and we know that the difficulties in which a prisoner is placed, who is charged with a conspiracy from the nature of the charge, are already sufficiently great. If the witness says, two men, whose names he knows, came and said something, or did something, I can call those men afterwards, or I can call somebody else to contradict this testimony; but if he says, two men, whom he does not describe, and does not know, came and did so and so, the prisoner has no means of rebutting that evidence, but may afterwards be connected, in some way or other, which he is not prepared to meet with those men; and in cases of conspiracy, if so connected, he will be answerable for every thing they did or said.

Lord President.—That does not follow.

Mr Grant.—It may follow, my Lord.

Lord President.—How is it possible to connect this prisoner with nameless individuals? Unless they prove something more, it never can connect the prisoner or any body else with them.

Mr Grant.—Then, to what purpose examine the witness?

Lord President.—The question is not an improper question in itself. It may tend very little to the purpose hereafter; but it is not improper in itself, because it may lead to something else which we did not know; and the Crown Counsel must judge of that. If you were to give a long narration to the witness, and ask him if it is true, that would be leading, and objectionable; but if the question is not objectionable, it is a question that may be put.

Lord Justice-Clerk.—It strikes me, that the objection merely tends to disclose the real circumstances of the transaction, that morning that he went to work, and no other journeymen came while he was there; and then he says, two

persons came, and he was going to disclose what did pass when they came to him; and whether material, or immaterial, it appears to me perfectly competent.

Mr Grant.—If your Lordships are of that opinion, this is not a case, from what I have seen, in which it is necessary for me to press objections.

Lord Chief-Baron Shepherd.—Suppose a case of robbery. In a case which I have known happen, where a witness has proved this: "At such a time in the morning, there came a knock at my door; they asked if my master was at home; who was it, I do not know; but by some message he delivered, my master went out; stating what he said; he said, there was somebody waiting at such a place, who wanted my master;" and though that person was not shewn to be the prisoner, yet it is a fact to shew somebody came there and said something, which induced the owner of the house to go out, and some other persons got into the house—surely it is evidence.

Mr Grant.—I yield at once to the pressure of your Lordship's opinion; but I think a case of conspiracy is different, for the reason I have given, that you are always liable to be connected with what other people have done; and therefore it was an objection stated, and forcibly stated, by Mr Erskine and Mr Gibbs; and the result was what I have stated. There it was a question what had passed in a large assembly at a dinner; and there an objection was taken, that the witness could not tell who it was that had said what he was going to state. He was allowed to give in evidence, that he heard this from the company, on the ground that there was no hardship in it.

Lord Chief-Baron Shepherd.—It cannot be excluded merely on the ground of its being a hardship, because that cannot decide what is competent evidence. It may happen that he may shew that there was nothing in it; but it is not merely that circumstance that excludes it. The question is, whether their names being mentioned or not, they not being prisoners, what they did or said that morning, is, or is not, admissible.

Mr Grant.—I had much rather withdraw my objection, than have it decided against me.

(*The witness was again called in.*)

Lord Advocate.—You say two persons came to the forge that morning?

A. Yes.

Q. Did they come into the forge?

A. Yes.

Q. You never had seen them before?

A. No.

Q. What did they say?

A. They asked me for two old files.

Q. Did they say what they were going to do with them?

A. No.

Mr Grant.—Surely we cannot hear that.

Q. Did you give them?

A. No, I did not.

Q. Did they say any thing further?

A. No, they said nothing further.

Mr Grant.—I submit, we cannot have at least what they said; if they asked for files, they did not get them.

Lord Advocate.—Did they threaten to take them?

A. No, they did not—not at that time.

Q. When did they do it?

A. They did not do it at all to me.

Q. Did you leave the shop upon those people coming?

A. I left it after those two men went out.

Q. Immediately?

A. Yes.

Q. Were there any other persons along with those men on the outside?

A. No.

Q. Those two alone?

A. They were just alone.

Q. No crowd at all of any kind?

A. No.

Q. Tell us what induced you to leave the forge that morning?

A. There was no boy. My men did not come down from Glasgow to begin to work, so I locked the door, and retired to Miss Torry's, the public-house.

Q. Did you take the key with you?

A. I hung it in the house, to the best of my knowledge.

Q. Did you lock the door when you went out?

A. Yes.

Lord President.—What house did you leave the key in.

A. My own.

Lord Advocate.—After you shut the door, did you leave any body to open it?

A. No.

Q. Did you see any body going into the forge after that?

A. No.

Q. Had you reason to suppose any persons were in the forge that day?

A. There were people in the forge that day.

Q. How soon after?

A. About an hour or so.

Q. How do you know people were there?

A. By my wife.

Q. Was your wife's telling you the only means you had of knowing that people were at work in the shop?

A. Yes, the only means at that time.

Q. What were the other means?

A. Because I heard the hammer going before I reached the forge.

Q. When did you hear the hammer going?

A. Before I reached the forge; she insisted on my going down to the forge, and I went down.

Q. How long was this after you had left the forge?

A. Better than an hour.

Q. She insisted on your going to see who was in the forge?

A. I went, but I never went inside of the forge. I looked in, and there was a multitude of people.

Q. Did you look in at the same door that you came out at?

A. Yes.

Q. Was it open?

A. Yes.

Q. And the hammers were going?

A. Yes, they were going before I reached the forge.

Q. Did they continue to go while you looked in there?

A. No, it stopped at the time I was just at the door.

Q. Did you hear it begin to go again?

A. It went, but I did not hear it.

Q. What did you see on looking in.

A. I saw nothing but a multitude of people standing.

Q. Were they doing nothing?

A. Nothing, as I seed.

Q. Did you observe any smoke coming out of the chimney at this time?

A. Yes, there was smoke arose from the fire.

Q. Did you observe if the bellows were going?

A. I did not observe that; but there was smoke arose from the work—whether the bellows was going, I cannot say.

Q. You did not go into the forge at all, or ask what those people were about?

A. No, I did not wish to go nigh hand it.

Q. Why?

A. Because I was threatened of my life.

Q. When were you threatened out of your life?

A. I was threatened of my life that day about eleven o'clock.

Q. You say it was about seven o'clock in the morning you first went to this forge?

A. Yes.

Lord President.—But he went at his wife's desire afterwards.

Lord Advocate.—Where were you threatened in this way?

A. I was threatened in the forge-yard.

Q. Had you been in the forge-yard previous to your going down when desired by your wife to go there?

A. It was through her that I did go there.

Q. And it was after that you were threatened of your life?

A. Yes, and I returned from the forge-door.

Q. Who was it threatened you—men or women?

A. It was men.

Q. How many?

A. I could not say the number.

Q. How many?

A. They were all standing in the forge, and out of the forge—they were both out and in.

Q. And what sort of threats did they employ to you—What did they say?

A. They told me if I went to inform, or did any thing, they would take my life.

Q. Upon that you went away, leaving those persons in the forge?

A. Yes.

Q. This was about eleven o'clock on the Monday?

A. Yes, to the best of my knowledge.

Q. What became of you the rest of that Monday?

A. I retired to the house I came out of.

Q. Did you remain there all day?

A. No, I came down to a shoemaker's, and I was there sometime after.

Q. How soon were you in the forge again?

A. I was in the forge between six and seven in the evening.

Q. And you were not there between the morning and tha time?

A. No.

Q. Were you ever out of sight of the place?

A. No, but I was in the house all the time.

Q. Did you observe whether there was any smoke from the chimney during that time?

A. I could not observe it; only when I was on the road, I saw the smoke arising from it, in going to that house and coming from it.

Q. What was the state of matters at six or seven o'clock in the evening?

A. There was nobody there at all then.

Q. What number of people were in the forge at the time they threatened you—twenty or thirty people?

A. I cannot say.

Q. Can you guess?

A. I cannot guess, because they were just about as thick as they could stand.

Q. Was the forge full of them?

A. Yes, it was quite full.

Q. Did you know any of them at all?

A. Not any of them.

Q. Were they all strangers to you?

A. All entire strangers to me.

Q. Did any body apply to you in the course of that day, or the next day, to do any thing in the forge?

A. No.

Q. Were there any quantity of steel, or files, sent to your forge?

A. There was about a hundred and a half, or from that to two hundred.

Q. Two hundred weight?

A. Yes.

Q. What did it consist of?

A. Old files.

Q. When was that sent?

A. Either on the Friday or the Saturday; but I cannot rightly say which it was.

Q. Had you worked up any of those files, or done any thing with them, on the Monday morning before you left the work?

A. No; but there were a great number of them broken.

Q. But they were all there when you left the work on Monday morning?

A. Yes.

Q. When you took possession of your forge again, was all that steel there again?

A. No.

Q. How much was left?

A. There was none left; for it was all brought to the constable here.

Q. What was there, then?

A. There was nothing there.

Lord President.—It had been all taken away before you returned?

A. Yes.

Lord Advocate.—At six o'clock at night, did you find any there?

A. Yes, there were a number of broken files.

Q. How much did they weigh?

A. I cannot say.

Q. But the greater part was gone?

A. Yes.

Q. Was it all gone, except what was scattered about the floor?

A. All was gone but the broken ones.

Q. Did you acquaint your master that this had happened?

A. I sent him word as soon as I could.

Q. When was that?

A. On the Monday afternoon.

Q. Did you tell him this steel was gone?

A. Yes.

Q. Did you acquaint him, in the course of the day, what was going on—that there were people in the forge?

A. No; I sent word as soon as I could get word to him; it was by a soap-merchant that was down that way; and I sent word along with him; he told me he was going to Glasgow.

Lord President.—You say that about five or six, when you went to the work, there were pieces laying about the floor, and all the rest was gone?

A. Yes.

Q. Do you mean that they were brought to the constable, or that you do not know where they were gone?

A. I do not know; but there were a great many broken pieces in the Castle afterwards.

JOSEPH TAYLOR—*called.*

Mr Sandford.—Where do you reside just now?

A. My family lives at Duntochar; I live at the Phœnix Iron Works, near Glasgow.

Q. How long have you lived there?

A. About seven weeks.

Mr Sandford.—I believe the same objection applies here.

Lord President.—You live at the Phœnix Iron Works, near Glasgow, and have lived there seven weeks?

A. Yes, it is seven weeks that I have wrought there; but I had been a number of years in the Company's employ.

Q. Do you live there?

A. Yes; I live there and work there.

Lord Justice-Clerk.—Have you resided at Duntochar during the last seven weeks?

A. No; I have resided at the Phœnix Iron Works.

Lord President.—Where do your family live?

A. At Duntochar.

Q. Have you a house there?

A. Yes.

Mr Sandford.—Is that your place of abode?

A. Duntochar is the place where my family live, but I work for the Phœnix Company.

Q. Have you a house at Duntochar?

A. Yes.

Q. Is that your proper house?

A. Yes.

Mr Grant.—In what house do you live?

A. I live just by the Phœnix.

Q. Have you a lodging there?

A. I have a lodging.

Lord President.—Do you go to your own house upon the Saturday and Sunday every week.

A. Yes, mostly.

Q. That is quite enough.

Mr Grant.—Yes, my Lord, I think so.

The witness was sworn.

Examined by Mr Hope.

Q. Before you left this place at Duntochar to work at the Phœnix Iron Works, what was your employment?

A. A spade-finisher.

Q. Did you work at Mr Edington's forge at Duntochar?

A. Yes.

Q. Had you worked at that place for a considerable time before that?

A. Yes.

Q. How many years?

A. Nearly ten years.

Q. Then you are well acquainted with the place?

A. Yes.

Q. And with the people in the neighbourhood?

A. I am not well acquainted with the neighbourhood.

Q. Were you working there at the commencement of April last.

A. Yes.

Q. Do you remember the first Monday in April?

A. Yes.

Q. Were you in the spade-finishing shop upon that morning?

A. Yes.

Q. Did any thing particular take place then?

A. Yes.

Q. Tell us what that was.

A. Some men came into the shop.

Q. How many men were there—five or six, or ten or twenty?

A. There were three or four first came in.

Q. Did you know any of those men?

A. I knew but one, that was Patrick M'Devitt.

Q. Do you see him now at the bar?

A. Yes.

Q. What took place—what did they say—and what did they do?

A. They brought in two old files, and clapped them in my fire, and heated them at my fire; and after heating them to a considerable length, he took them out of the forge.

Q. Did the other people with him do any thing?

A. No; I did not see them do any thing.

Q. What number of files might M'Devitt have in his hand?

A. A couple of them.

Q. Did you see where M'Devitt went when he left the spade-finishing shop?

A. I believe he went out of the forge?

Q. Did you see where he went to?

A. No, I did not look to see where he went; but he went, I believe, out of the forge.

Q. Did you remain in the spade-finishing shop, or did you leave it?

A. I left it soon; then a good many more persons came in.

Q. Why did you go away?

A. Because I seed more, what you call pikes, that were finished off.

Q. In the hands of those persons?

A. Yes, but I do not know who it was that had them.

Q. Did they threaten you at all?

Mr Grant.—Ask him what they said to him.

Mr Hope.—I submit that I am putting a question not incompetent to my own witness. Did they threaten you with these pikes?

A. No, but I heard that they had threatened.

Q. Did you go away from fear?

A. Yes.

Q. Did you leave those men in the shop when you went away?

A. Yes, some was, and some was not.

Q. Did they tell you for what purpose they came into your shop?

A. Yes, they came to make those pikes.

Q. How long was this after M'Devitt had come in with two files to heat in your fire—or was it just about the same time?

A. It was at the same time with the first.

Q. And the others came in afterwards?

A. Yes.

Q. And this was early in the day—I think you say about breakfast time in the morning?

A. Yes.

Q. Did you return to your spade-finishing shop after that?

A. No, they all went out; and it was about breakfast time, and I went out, and locked the door.

Q. Did you take the key away with you?

A. Yes.

Q. Did you return that day to the spade-finishing shop?

A. Yes, I returned after breakfast again, and there were a great number of persons about.

Q. About the door of your shop?

A. Yes; and they told me to open the door, that they wanted out some fire.

Q. Did you know any of those persons?

A. No, I did not.

Q. Did you know them by sight?

A. Yes, I knew some of them by sight, but I do not know the names of them.

Q. How did you know them by sight? were they people who lived in your neighbourhood?

A. I knew them when I saw them again—I did not know them then.

Q. Do you mean that they were the same persons whom you saw in the morning, or that they were persons whom you knew by sight when you saw them?

A. Yes, I knew them by sight when I saw them again, but I did not know them then.

Q. Were they the same people whom you saw in the forge?

A. Yes.

Q. The same people who were along with Patrick M'Devitt in your shop?

A. Yes.

Q. They said that they wanted fire, I think, you said?

A. Yes.

Q. For what purpose?

A. They did not say for what purpose; they took it to the forge.

Mr Grant.—I am entitled to know how he knew that.

Lord President.—You will ask that, of course.

Mr Grant.—I never heard when a witness, who happened by any accident to say that a person did such a thing, or another thing, that the opposite Counsel were interrupted, when he said, how do you know that he says you cannot see into the forge from the other shop?

Mr Hope.—He says he found those people at the door; that they said they wanted fire, and they took it to the forge; and I want to shew how they went to the forge, and how he knew it. The witness had gone too far, and I wished to bring him back.—Did they desire you to open the door?

A. Yes, they told me to open the door for them, which I did.

Q. Did they request you, or order you, to do it?

A. They told me to open the door, and they must have some fire.

Q. Did you do it under the influence of fear or terror?

A. Yes, I did.

Mr Grant.—Really this is too much.

Mr Hope.—I have seen nothing to induce me to abandon any question your Lordship thinks competent.

Lord President.—It is perfectly competent.

Mr Hope.—What did they do after they compelled you to open the door?

A. I went away then home.

Q. Did you see them take any fire out of the shop?

A. Yes.

Q. I want to know what took place before you went away—what did they do?

A. I went home then immediately.

Q. What did you see before they went away?

A. I saw them take fire up.

Q. Where did they carry it?

A. Into the forge.

Q. Did you see them carry it into the forge?

A. Yes.

Q. Did they tell you for what purpose they wanted that fire?

A. No; but they were speaking about making those pikes, as I observed before. I saw two which they had with them.

Q. Was the forge door open at this time?

A. Yes, it was open at that time.

Q. Had you observed whether it was open when you went this second time to your spade-finishing shop?

A. No, I did not positively observe.

Q. Did you see it was open?

A. It was open then.

Q. Did you see it opened?

A. No, I did not.

Q. How many men might there be, upon this second occasion, who went into the forge?

A. I cannot possibly say; there might perhaps be a score.

Q. Were those persons who lived in the neighbourhood?

A. Yes, some of them were.

Q. Where did those persons live who lived in the neighbourhood?—what village, or what hamlet?

A. Some of them lived at Glen-head.

Q. Did any live at Patrick?

A. I do not know any.

Q. What were the names of those Glen-head people?

A. There were two of the name of Munroe?

Q. The two men at the bar?

A. Yes.

Q. Robert and George?

A. Yes.

Q. About what hour was this? You say it was after break-

fast they took the fire to the forge, among whom were the two Munroes—about what hour might that be? was it directly after breakfast, about ten o'clock?

A. It was between nine and ten.

Q. What other Glen-head people were there then?

A. One of the men was Blair.

Q. What was he—a cotton-spinner?

A. Yes, I suppose so.

Q. Do you see him here?

A. Yes.

Q. Which is he?

A. This. (*pointing him out.*)

Q. What other Glen-head people were there?

A. One of the name of Smith.

Q. What was his first name, do you know?

A. I cannot positively say; William, I believe.

Q. What other Glen-head people?

A. I do not know of any more now.

Q. What did you do after this?

A. I went up home, and stopped till about two o'clock.

Q. Did you go back to the forge that day?

A. Yes, then I went back to the forge.

Q. What did you see then?

A. Only a few boys.

Q. Did you see men there?

A. No.

Q. Did you hear the hammers going?

A. Yes, the hammers were going.

Q. Did you see at that time any of the persons who had taken the fire into the forge in the morning?

A. No.

Q. Is there any grinding-stone in the immediate neighbourhood of that forge, near to the spade-finishing shop?

A. There is a little hand-stone.

Q. Is it a grinding-stone?

A. Just out at the side-door of the forge.

Q. Did you see any persons about that grinding-stone that day?

A. No.

Q. At no part of the day?
A. I did not observe.
Q. You saw nobody upon that day?
A. No.
Q. Upon the Tuesday?
A. No.
Q. Neither the Monday nor the Tuesday?
A. No.
Q. The Wednesday, did you see any persons there?
A. No; I was not at home, I was in Glasgow then.

Cross-examined by Mr Grant.

Q. Did you know the prisoner, Robert Munroe, before you saw him that morning?
A. No.
Lord President.—You say you had not known the prisoner, Robert Munroe, before that morning; but you know now, that it is the same man that you saw that morning?
A. Yes.

THOMAS GRAHAM—*sworn.*

Examined by Mr Drummond.

Q. Did you live at Duntochar in the month of April, in the beginning of April?
A. Yes.
Q. You are a workman at Duntochar?
A. Yes.
Q. At Duntochar distillery?
A. Yes.
Q. You know the forge there?
A. Yes.
Q. Do you know the grinding-stone that stands near the forge?
A. Yes.

Q. Did you see that grinding-stone upon the first Tuesday of April?

A. Yes.

Q. Were you near at that time?

A. Yes, I saw it.

Q. Did you see any body beside it then?

A. Yes.

Q. What was the person doing that you saw near it?

A. He was grinding one of those old files.

A. A thing like that, was it? (*handing a pike-head to the witness.*)

A. It was broke.

Q. It was the same length, and something of the same kind?

A. I do not know whether it was the same length or not, but it was something exceedingly nigh it.

Q. Who was the person?

A. One George Munroe.

Q. Do you see him here to-day?

A. Yes.

Q. Do you see any other person of the name of Munroe here?

A. Yes.

Q. Which was the one you saw grinding the pike?

A. That one. (*George Munroe.*)

A. This is the man that you saw?

A. Yes.

Q. Did you see the other Munroe there that day?

A. I seed him grinding the iron of a plane.

Q. The other man?

A. Yes; it was a tool that he was holding on the stone.

Q. What was the other doing?

A. He was putting water on the stone, at the same time that I saw him.

Q. The iron of a plane?

A. Yes.

Q. It was out of the wood?

A. Yes, he had the iron in his hand.

Q. He was grinding that?

A. Yes.

Q. Was this on the same day that you saw the other man grinding?

A. It was on the Monday.

Q. That was the day before?

A. It was the Monday that they were grinding the pike.

Lord President.—I thought you said the Tuesday?

Mr Grant.—My learned friend asked him, whether he saw him on the first Monday, and he said, yes; I begged of my learned friend to abstain from mentioning the day, and now they will see how important it is.

Mr Drummond.—Who was grinding the pike on the Monday?

A. That man. (*George Munroe.*)

Q. And who else?

A. There were a parcel of boys round him at the same time.

Lord President.—George was grinding the pike?

A. Yes.

JAMES THAIN—*called.*

Mr Sandford.—Where do you live?

A. In Wanford.

Q. Where is Wanford?

A. It is three miles of this side of Glasgow.

Q. How long have you resided there?

A. Six weeks.

Lord President.—Does your family reside there too?

A. Yes.

Q. Have you no house at Duntochar?

A. No.

Q. Did you ever reside at Duntochar?

A. Yes.

Q. When did you quit it—at Whitsuntide?

A. About three months ago.

Lord President.—That will not do, gentlemen.

Mr Grant.—He must not go away—he is an exculpatory witness for some of the other prisoners.

Lord President.—Do you want him to-day?

Mr Grant.—No, my Lord; I only desire that he may not go out of town.

JOHN CONNELL—*sworn.*

Examined by Mr Maconochie.

Q. You are employed at the Faifley Cotton-mill?

A. Yes.

Q. Were you so in April last?

A. Yes.

Q. Do you remember the cotton-spinners at that mill stopping work this year?

A. Yes, I do.

Q. When was it?

A. On the first Monday of April.

Q. Do you know Duntochar?

A. I know the place very well.

Q. Do you know that there is a forge at Duntochar?

A. Yes.

Q. Had you occasion to be at Duntochar forge, or at the grind-stone near it, on the first Monday in April?

A No, I was not at Duntochar.

Q. Were you at the grinding-mill at Faifley on the first Monday in April?

A. Yes, I was.

Q. Whose mill is it?

A. It belongs to Mr Edington; but he did not occupy it at that time.

Q. Did you see any body there?

A. Yes.

Q. At what o'clock was it?

A. Between two and three o'clock of the meat hour; I do not know what it was by the day; I believe it was about two o'clock of the day.

Q. How many people did you see at this mill?

A. About eight people, I think.

Q. What were they doing?

A. Some of them were grinding, and some were standing on the floor.

Q. What is it that they grind at that place?

A. What—that day?

Q. Yes.

A. I saw them grinding things that I imagined to be pikes.

Q. Look at those things, (*handing two pike-heads to the witness*) were they things like those?

A. Something similar to that.

Q. Did you know any of the people that were at this grinding-stone?

A. Yes; I know one that was at the stone.

Q. He was grinding?

A. He was at the stone, but I do not know whether he was grinding.

Q. Who was it?

A. George Munroe.

Q. Was there any other body?

A. I did not know any body else at the stone.

Q. Did you see any body?

A. Yes, there were four or five altogether by the stone.

Q. Did you know their names?

A. No; I knew them all by sight, but I could not name them.

Lord President.—Were there any of those men there?

A. Yes.

Q. Which of them?

A. Only one—Robert Munroe was in the mill.

Q. Had he any thing in his hand?

A. He had a pike in his hand; at least something that I took to be a pike.

Q. What was he doing with this pike in his hand?

A. He lifted it off some things that were in the place, to let us see it. I went in along with William M'Haffie, and he was there.

Q. What did he say to you?

A. He said nothing to me.

Q. Did not you hear him say any thing?

A. No.

Q. Did you leave them there?

A. Yes.

Cross-examined by Mr Grant.

Q. You have said that you discontinued working at Faifley-mill on the Monday?

A. Yes; the spinners did not work any on that day.

Q. Do you know the cause of their not working any on that day?

A. They had a meeting at the entering, going to the mill at eight or nine o'clock, to consider whether it was safe for them to work or not.

Q. Were you present?

A. No; but my window looks over the place, and I heard them.

Q. You heard them discussing whether it was safe for them to work or not?

A. Yes.

Q. What resolution did they come to?

A. They thought it would be better to discontinue work for a day or two, till they saw what came about, for they were afraid to work.

Q. Did they say what they were afraid of?

A. It was reported that there were a number of people coming round, and that they would take all before them, and force them to take one side or the other; and they were afraid they would force them to go along with them.

Q. Was that the reason you heard them give for discontinuing work?

A. The very reason.

Re-examined by Mr Maconochie.

Q. At what time did this conversation take place?

A. At the breakfast hour, in the mill—nine or ten o'clock.

Q. They had worked in the morning, had they?

A. Yes.

Q. Did they give any reason for this alarm—any particular reason?

A. No, I could not say.

Q. Was there any thing said about a paper of any kind?

A. It was in consequence of the paper that they were afraid. There was a paper posted at the end of James Bryson's house.

Q. Did you see that paper?

A. Yes.

Q. Did you read it?

A. Yes.

Q. Do you recollect what was the beginning of it?

A. I could not say.

Q. It was a printed paper?

A. Yes.

Q. Do you remember to whom it was addressed?

A. Yes; it was addressed to the Inhabitants of Great Britain, I think; I would not be positive.

Q. Do you remember how it ended?

A. I think it ended something about the soldiers in Spain.

Q. Do you recollect any thing more?

A. I read it all, but I did not think I should have to speak to it again.

Q. Do you remember the date of it?

A. I think it was the first of April.

Q. Did it state by whose order it was put up?

A. Yes; by the Committee of Organization.

Q. What more?

A. I do not recollect sure.

Q. Was there any thing about stopping work in it?

A. Yes, I believe there was.

Q. What did it say about stopping work?

A. I think it said they were to stop whilst something was done. I do not recollect what was said about it; I could not repeat it.

Q. Do you remember the substance of it?

A. No.

Lord President.—Did it recommend to the people to stop work, or forbid them to stop work?

A. It recommended them to stop work.

Mr Maconochie.—Until what should be done?

A. I think the paper said something about their rights was done.

Q. What else?

A. I cannot say.

Q. Was there anything about a provisional government?

A. No, I do not think there was.

Mr Grant.—Have you ever seen this paper anywhere else?

A. No.

Q. Have you ever read it since?

A. No.

WILLIAM M'HAFFIE—*called.*

Mr Sandford.—Where do you reside?

A. At Glen-head.

Q. How long have you resided there?

A. Six or seven weeks.

Mr Drummond.—How far is that from Faifley?

A. About three-quarters of a mile.

Q. What is Faifley—a small village?

A. Yes.

Q. What is the place where you live—a village, or what?

A. Yes.

Q. In the parish of West-Kilpatrick?

A. Yes.

Q. Faifley is in the same parish?

A. Yes.

Lord President.—If you had left that parish, it would have been to be discussed whether it was right; but if you chuse to describe a village, you must take the consequence of a wrong description.

Mr Maconochie.—When did you go to reside there?

A. Six or seven weeks ago.

Mr Grant.—This witness may go away.

Lord President.—I suppose so.

Mr Grant.—You will not be wanted to-day; but you must not go out of town.

WILLIAM CLARK—*called.*

Mr Sandford.—Where do you live?

A. In Glasgow.

Q. How long have you lived there?

A. Since the 28th of May last.

Mr Sandford.—He is described as residing at Faifley, in the parish of West-Kilpatrick, and county of Dumbarton.

Mr Hope.—Have you a house at Faifley at present?

A. No, not now.

Q. When did you quit your house?

A. On the 28th of May last.

Q. How long did the house remain in your possession afterwards?

A. No longer than I lived there.

JOHN LAWRIE—*called.*

Mr Sandford.—Where do you live?

A. At Springbank.

Q. How long have you lived there?

A. It is about four or five years since I lived there, and only used to come backwards and forwards.

Q. How far is Springbank from West-Kilpatrick?

A. About eight miles, I think.

Mr Sandford.—Here he is described as residing at West-Kilpatrick.

Mr Maconochie.—Have you lived at West-Kilpatrick lately?

A. No, I have not been living in Old Kilpatrick for four or five years.

Mr Grant.—You will not leave the town; you may be wanted for some of the prisoners.

Mr Serjeant Hullock.—You will recollect, those witnesses you keep, you must pay for.

Mr Grant.—That is a question for the witnesses.

Mr Serjeant Hullock.—It is a question between you and us; and when you have examined them, I will cross-examine them.

HUGH WILSON—*sworn.*

Examined by Mr Serjeant Hullock.

Q. You belong to the Glen-head Cotton-works, do you not?

A. I do.

Q. Did you do so in the month of April last?

A. Yes.

Q. What situation were you in?

A. I was clerk in the Duntochar Cotton-mill.

Q. How many spinners had you in that mill in the beginning of April last?

A. I am thinking we had about twenty-eight or twenty-nine.

Q. Were any of those persons belonging to you, and which of them?

A. William Blair, William M'Phie, Robert Munroe, and George Munroe, were there with us.

Q. And none of the others?

A. None of those.

Q. Had you any thing to do with the Faifley Mill?

A Nothing.

Q. Do you remember seeing an Address, in the beginning of April, posted up in any place?

A. Yes, I saw it posted on a door in going to the kirk; it was upon the corner-house of the street of Glen-head.

Q. Was that on Sunday morning?

A. On Sunday morning.

Q. Had any thing particular taken place in your cotton-mill, on either the Friday or the Saturday, the day before, or day before that?

A. There was nothing very noticeable took place; there was rather a little stir among the spinners, principally persons sending their piecers from one person to another.

Q. Was there any thing amongst them which excited your suspicions or apprehensions on the Saturday?

A. Nothing more than I have stated, that I recollect.

Q. Repeat what you said before?

A. There was rather a little more stir among them, particularly by their piecers being sent from one to another; there was a little of that.

Q. Do you know whose piecers they were that were so sent?

A. It was particularly noticed that John Stewart's piecers were on the stir, and going from place to place.

Q. John Stewart was one of your spinners?

A. Yes.

Q. Along with the persons whom you have mentioned?

A. Yes.

Q. You say you saw this Address on the Sunday?

A. Yes.

Q. Do you remember about what time of the Monday morning it was that the spinners came to work?

A. When I came out at six o'clock, as usual, they were all collected; or at least, what I call all; there might be two or three, or four or five wanting; but there were a number of them collected at the entry-door.

Q. That was on the Monday morning?

A. On Monday morning.

Q. You think some of them might be absent, but you do not know?

A. Some of them might be absent, but I do not know that any of them were.

Q. You cannot charge your memory with the name of any person who at that time was absent?

A. No; but I know that from my inattention to them,

there might be to the length of six or seven of them absent.

Q. Did they come to you, or did you meet them in the place that you have mentioned?

A. A number of them came in. I am quite vexed in seeing my old friends there; and I really cannot know them, scarcely; but they came to my desk. I went to my desk, as usual, and they came to me there, at least Archibald M'Lean came, in the front of a number of them, to me, at the desk: I recollect perfectly their faces.

Q. Were you in the counting-house at that time?

A. I was in what is called the warehouse.

Q. Is that the place where you sit at your desk?

A. Yes, that ismy usual place.

Q. That was not a room in which they had any thing to do, except they wanted to see you?

A. No; at least at that time.

Q. You say that a considerable number of them came in, with M'Lean in front of them, at their head?

A. Yes.

Q. Have the goodness to state what he said to you in the hearing and presence of those persons who so accompanied him?

A. He came in, and laid himself on the end of my desk, in this form, (*describing it,*) and I do not know whether he said they were wanting, or that they were come wishing, to have their wages; I cannot state which of the ways it was.

Q. How soon before that had they received their wages in course.

A. If I mistake not, it was the Saturday before that day; the Saturday eight days before.

Q. Was it usual in those works to pay their wages weekly, or by the month?

A. Monthly.

Q. Then, at that time, a week and two days had only elapsed since they had received their wages?

A. No longer, I think.

Q. What answer did you make to M'Lean?

A I asked him the reason why he asked his wages, I think.

Q. Will you state to us, as nearly as you can, the precise words which he used in reply to you?

A. To the best of my remembrance, and on the oath I have taken, he said, That they were going to have, or get their rights, and would not return without them; I think those are nearly the sentences.

Q. Was that the meaning of the words?

A. Those are the meaning of the words, to the best of my knowledge; I must state now, that when he said this, there was an apparent disapprobation of what he said operating amongst the rest of them behind.

Lord Advocate.—Was it apparent?

A. Quite apparent, and one or two spoke; I was answering of what he said, and I did not attend to them; but the two that spoke, I think, said, that on account of what was in the Address, they were afraid, both for their master's property and injury for themselves; this was the account of what they said, but being engaged in answering and hearing M'Lean, I did not attend to them so much as I should have done. I would say also, that I think this was the sentiment of the whole of them, or at least it looked to be the sentiment of more of them than what M'Lean said.

Q. State to us all that you remember, that took place between you and them at this time?

A. I shortened the business with these men, "I suppose you have said all you have to say to me?" they said they had; and I said, "Go away then."

Q. Have you stated to us all that passed at that time?

A. I have not, and never will be able, for there is a good deal passed from my memory.

Q. Have you stated to us the whole of what you remember; or do you remember any thing more that passed at that time?

A. I remember that William M'Phie was at my hand, and he began to say something about reform; I do not know that the word was mentioned, but it appeared to be something like it; and the answer that I gave him was, that it

was what I did not like myself. I turned round to him and said, that I knew all about it—I had been a reformer these twenty years, and I had signed a declaration, in the days of the Friends of the People, at a meeting in a country place where I was, and the substance, as I recollect, another spinner who was——

Q. Was Neil M'Lean there?

A. I could not say M'Lean was there; but I saw him afterwards when they were going out of the place; I saw him going out with the rest.

Q. Did they leave work that morning?

A. They went from my desk, them that were behind M'Lean, as if they had been going to work; the door was towards the right hand, and they went out as if they were going to work; the other door led to the work, and they went out as if they were going to the work.

Q. Did they go to their work?

A. They went to their place, some of them, but they did not begin to work; what turned them out, I cannot say.

Q. They did not work?

A. No.

Q. Did they work at any time after that?

A. None.

Q None of those persons?

A. No.

Q. I do not mean that day—but have they worked since?

A. None of those four, and very few of the others.

Q. How long did the persons who then went out cease working—how many days?

A. I am not certain of that; I cannot distinctly say the day we began—I cannot mind whether it was that week, or early next.

Q. It was not for several days?

A. It was not for three, or four, or five—I think it was he beginning of the next week.

Q. In consequence of those persons abstaining from work, were your other persons, the women and children about the mill, thrown off their work.

A. I think they wrought till the evening, and when they

came out, I stepped and said to them—they stated a circumstance——

Q. They did not work after that evening?

A. I think not—I would not go too far off to say they did not work the day after—but I think they could not—my mind is in agitation, but I will tell you what I know, to the best of my conscience.

Q. How many working persons might there be about that mill?

A. I was not in the habit of asking them—but I think we had about three hundred and twenty.

Q. Were the whole of those persons off work on the following day?

A. I think they were, according as I mentioned to you before; that, to the best of my knowledge, they all left off work on the Monday evening.

Q. And they did no more work that week?

A. I am not absolutely certain, but I think they did not begin that week.

Q. Had you any conversation with any of those persons, on any part of that day, after the time of which you have been speaking?

A. I cannot recollect days, but I recollect that, before the wages were given them, there were different times one or two or so came, different men at different times; I dare say there were not less than perhaps three or four times a day.

Q. What did they say to you?

A. I should have said, that I said to them, when they asked me for their wages first, that I would give information to Mr Dunn; and I always said to them, that till I got orders from Mr Dunn, I would not pay them.

Q. Several applications were made to you?

A. Yes.

Q. State to us the nature of those applications?

A. It was principally, When will we get our wages? that was the principal substance of their application.

Q. Do you remember any thing passing on the Wednesday, for instance, now?

A. You mean what conversation passed between the men and I at any time?

Q. Yes.

A. There is no conversation that passed between any of them that I am aware of, that I can state particulars of, except one time when William M'Phie came, that I turned round to him——

Q. When did William M'Phie come to make an application?

A. I cannot say.

Q. Who accompanied him?

A. I am not altogether certain, but it is like a presumption on my mind that it was Robert Munroe—but I am not certain—I would not say—perhaps it was him rather than any other—but I cannot positively say it was him; but I am telling you all my heart about it.

Q. When was it, or, if you cannot tell when it was, what did they say to you, whoever was along with William M'Phie?

A. Perhaps there was more passed between him and me at this time; but this, I turned round to him, and I said, "No, my good lad, you are well yet, take care, when you are going to look after your rights, that you do not invade the rights of others."

Q. What did he say to you, that induced you to make that observation to him?

A. He had said nothing that induced me, to the best of my recollection; but it was in consequence of the expression which had been used by M'Lean.

Q. It was in consequence of the expression used by M'Lean on Monday morning?

A. I think it was.

Q. Was the subject renewed between you and M'Phie?

A. I renewed it in this manner—but it is out of my power to tell his answer—but I can tell the substance of it, or what I think now was the substance—The substance of it was, as if he had viewed with detestation the idea of invading any man's rights, or injuring any man; this sticks on my mind as the substance of what he said, and I think his natural disposition is to that purpose.

Q. What took place between you?

A. I have just told you all that I recollect.

Q. Was any thing said about their wages at this last time—what did they come to you for?

A. They came for their wages, I understood.

Q. What more was said then?

A. I always had the same answer, that I could not pay their wages, until Mr Dunn sent me the money, and that I was getting on with them to make up their wages, and when I had the bill-books I would send to him.

Q. Was that the only time any of those persons came to you?

A. I told you that there were three or four times every day that they came, maybe one at one time, two at another, and one at another—there were several applications made during the day.

Q. And you cannot tell us any thing that took place, except upon this occasion, to which you now refer?

A. I recollect nothing that took place, except the general question, When would they get their wages? I recollected more before, but time, and the present agitation of my mind, makes me that I do not recollect more particulars.

Q. You say you had a workman of the name of Lindsay

A. Yes, we had two workmen there of that name.

Q. Were they of the party on the Monday morning?

A. If I were to point out any particular person more than another, I would say Alexander Lindsay was one that came to me on the Monday morning—I think it appears more upon my mind than any other.

Lord President.—Do you mean who came on the first morning with M'Lean, or who came afterwards with Munroe?

A. If any one, Robert Munroe was with M'Phie; but I think the great body were with M'Phie.

Mr Serjeant Hullock.—They left you on Monday morning, as if they were going to work?

A. Yes.

Q. Did you go by the window afterwards to speak to them?

A. Yes, I was fetched to the door, and spoke to them.

Q. What did you say to them?

A. I cannot recollect the ideas that I might give them, but I spoke to them about their going away—and I certainly did say they were wrong in going away; but I cannot recollect what it was.

Q. Do you remember Alexander Lindsay saying any thing to you?

A. Yes; I recollect a very striking thing he said, poor lad,—he is a good-tempered and quiet lad, I believe,—I might mention some danger or something; but he said, I think, by twelve o'clock, or some hour of the day, the business would be all over at Glasgow; and the houses opposite the barracks were all gutted, and trenches thrown up in the barrack-yard.

Q. Did he say any thing more than what you have now stated?

A. I think I said, it would be of no use for them to go; and I think his answer was, that they were expected though.

Q. Notwithstanding it was to be so soon over, they were expected?

A. Yes; those were the words, I believe.

Q. Did you say nothing in answer to that?

A. I recollect there was undoubtedly more, but I cannot remember it.

Q. Was it after this that M'Phie and Munroe came for their wages?

A. Yes.

Mr Grant.—I do not think he said Munroe came.

Lord President.—Yes, he rather thought Robert Munroe, but he was not positive of it.

Mr Grant.—He said it was rather a presumption on his mind.

A. I really cannot say it was the man.

Mr Serjeant Hullock.—Were there no others that you remember coming besides?

A. I recollect Archibald M'Lean coming once alone, and once in company with some others, I think; but I do not recollect more.

Q. Do you recollect any thing that took place when he came?

A. I do not recollect any thing that took place at any other time, that any of the spinners came to me inquiring concerning their wages.

Q. You say that M'Phie came, and you think, but you cannot charge your memory exactly, that Robert Munroe came?

A. It was him if it was any, I think; I would unbosom my heart to you, but I beg of you not to push me hard.

Q. Did they come on their own account, or as a deputation or messengers from the other people?

A. I cannot say; it was a common thing with us to send deputations, and in a case of that kind it was one from each factory sent as a deputation; but I think that those who came to me were not all deputations, and perhaps not above one or two of them; but I cannot say who were, or who were not.

Q. Only one or two?

A. I do not know that there were more than one or two; I took it they were deputations, but God knows whether I was correct or not.

Q. Did they say to you whether they came in that way or not?

A. I do not recollect that.

Q. Did they assign any reason for wishing for their wages at any of those times?

A. It was perhaps they might be taken away, and they wished to have money with them.

Lord President.—Did they say that?

A. I think some of them said so; I think some of them said the grocer would not give credit to them, and I think that was all.

Mr Serjeant Hullock.—Who was it that they said might take them away?

A. I understood that there was a general impression and understanding in the place.

Mr Grant.—We must not have general impressions and understandings.

Mr Serjeant Hullock.—They did not tell you by whom they were afraid of being taken away?

A. I really made little inquiry. I got to the books as early as I could on Tuesday morning to settle their wages, and I had no time to talk with them.

Q. Had you orders from Mr Dunn to pay their wages?

A. I had orders to make out their accounts, and pay their wages, as soon as I could.

Q. Did you pay their wages afterwards?

A. I think on Thursday afternoon.

Q. Were they all together at that time?

A. Not more than one or two. I paid some to their wives—sent it to their houses by others.

Q. Which spinner was it who was there?

A. I think it was a lad of the name of Cunningham.

Q. You say you saw an address on the Sunday morning?

A. I did.

Q. Had you any conversation with any of the spinners about that address?

A. I was standing upon a cask to read it, when M'Phie was passing to go to church, and I went to church with him.

Q. You got on a cask to enable you to read it?

A. Yes.

Q. Did he say any thing to you, or you to him, upon the subject?

A. I conversed with him the whole way, but I cannot give you one idea or sentiment that passed between us upon that business.

Q. Did you talk about the Address?

A. I am not sure that it was about the Address. Yes, there is an idea come across my mind;—I think, and if I am mistaken I will beg pardon; but I said to him that if they went out on that Address, I begged of them to have prudent men over them, or leaders to prevent mischief. I think it might be that.

Mr Grant.—The witness should not state what he does not know.

A. I state that doubtfully, but I think it was to this purpose.

Mr Serjeant Hullock.—What did he say to that?

A. I do not recollect, but I think it is very likely I said more, as I was very anxious about it.

Q. You do not recollect what was said to you?

A. I cannot bring forward one idea or sentiment of my mind. I was very serious, and I dare say he was so too.

Q. What made you think he was going out?

A. Because the whole of the operatives was to cease work from what that address said.

Q. What had he said to induce you to suggest that to him?

A. He said nothing to me, that I recollect, that would lead me to think he was going.

Q. You would not have addressed that to me, I hope?

A. Because I thought the whole of the operatives would go out by that Address.

Lord President.—You thought so?

A. I saw the Address.

Mr Grant.—The witness is saying what he does not mean.

Lord President.—What he says he is answerable for. You know I do not suspect him of bad designs, but he has said something he ought not to say.

Mr Serjeant Hullock.—Was it not something you heard on Saturday that induced you to make that observation?

A. I stand here on my oath, and to the best of my knowledge I never spoke to any one of our spinners about such a subject till that Sunday morning; him and I never had conversations upon such a subject.

Q. Had not you heard something from some of them on Saturday, which induced you to think they were going out?

A. I gave the most distinct answer I could, if I were to answer a hundred times; I never spoke to them on the subject before that Sunday morning.

Q. The first time you addressed M'Phie on the subject of that paper, you used the expression you used to-day?

A. To the best of my knowledge, it arose purely from an understanding.

Mr Grant.—I must interpose.

Lord Advocate.—Remove the witness.

Mr Grant.—I wish to give the witness a caution, that he may not criminate himself;—it is the advice this man was giving.

Lord President.—It was a very laudable purpose;—he thought they were going out.

Mr Grant.—And therefore he recommended them.

Lord President.—He had said that before.

Mr Grant.—I think he ought not to be pressed further upon that Address. He gave him advice.

Lord President.—If you are going out, take care and go under prudent leaders, who will not lead you into mischief —he has given the answer. There is one thing you need not distress yourself about;—a witness brought here cannot be prosecuted for what he has said. That is part of the law of Scotland.

Lord Chief-Baron Shepherd.—If a question were put by a Counsel, the answer to which would tend to criminate the witness, the Court would interfere to warn him; but upon a question which may or may not criminate him, it is for the witness to appeal to the Court, and then the Court will advise him. The advice he has given, I should think, criminates himself, as it strikes me.

Mr Grant.—I do not believe the man is involved in any crime.

Lord President.—Suppose you were going out, I might be guilty of misprision of treason in supposing you were; but if I were to say, If you are going out, take care and go under a prudent man, I might be guilty of a misprision of treason by supposing you were going out, but not by telling you to take care who you go with.

Mr Serjeant Hullock.—You had never seen the Address before the Sunday morning?

A. Never.

Q. You had heard of such a thing?

A. Yes; the spinning master came to me on the evening of Saturday, and said he had seen it.

Q. What is his name?

A. James Slimmond.

Q. James Slimmond was the spinning master at that mill?

A. He is one of the spinning masters there.

Q. Did he shew you the Address on Saturday night?

A. I did not see it till Sunday morning.

Q. Had you a spinner of the name of Stewart?

A. Yes.

Q. What was his Christian name, do you remember?

A. His name is John Stewart.

Q. He was one of the spinners at this time at your mill?

A. Yes.

Q. Had you no conversation with him on the Saturday upon the subject of the Address?

A. I need not repeat, after I have been forbidden to repeat so much, that I never spoke to any of our spinners on the subject; there were such it would not have done for me to have conversation with, and I never did it.

Q. You read the Address from the top of a cask on which you stood?

A. Yes.

Q. How did it begin?

A. I did not read that part which began about soldiers.

Q. What made you skip that?

A. I thought it did not concern people that did not wear red coats nothing.

Q. How did the other part begin which you read?

A. I really do not recollect.

Q. Then the part you skipped over you recollect, and the part which you read you forgot?

A. It is a very good compliment. The reason I stopped was, that I saw from that word that it did not concern me.

Q. I take that as a good reason for you not reading it; now tell me how the other part which you read began?

A. I cannot do that.

Lord President.—To whom was it addressed?

A. I suppose it was not addressed as the first part of it.

Q. How was the first part of it addressed?

A. I think it was an Address to the Inhabitants of Great Britain and Ireland; I have seen it since, but I never read the whole of it at that time.

Mr Serjeant Hullock.—Do you remember how it ended?

A. No, I do not; it is a thing I know nothing of.

Q. What place was it dated at?

A. I think it was at Glasgow, but I am not altogether certain; but you know better than I do. If I thought there was one sentiment of my heart that you would get, you would have it.

Q. What was the date of it?

A. I do not recollect;—it is a thing that I paid no attention to as any way interested in it—I never did.

Q. Then you paid so little attention, you cannot tell me the date of it?

A. No, I cannot tell you the day of the month it was dated.

Q. By whom was it signed?

A. I cannot tell, or if it was signed.

Cross-examined by Mr Sandford.

Q. How long had Robert Munroe been in your employ?

A. They have been in since I came to the mill, and longer, I believe; more than fifteen years.

Q. What do you know of Robert Munroe's character?

A. His character as a workman I do, and his general character of a man; I take him to be a little credulous and weak; not so capable of managing himself as many others.

Q. But his moral character?

A. I think he is a good honest man; and I would trust my life as soon in the hands of all those four, as I would of any man.

Q. Do you know his father?

A. I know his father well.

Q. Is he an old man?

A. He is an old man.

Q. Do you know how the father was supported?

A. The father was supported by the two lads, and George has been the principal support of father and mother since I have known him.

MR ALEXANDER DUNN—*sworn.*

Examined by Mr Hope.

Q. You reside at Duntochar, I believe?

A. Yes.

Q. Had you charge of the Duntochar cotton works?

A. Yes.

Q. They are your brother's?

A. Yes.

Q. Were you at Duntochar in the beginning of April?

A. Yes.

Q. Did you observe any particular papers posted up at Duntochar at that time?

A. Yes, I saw it on Monday.

Q. In April?

A. The 3d day of April, I think.

Q. Where did you see that paper?

A. It was near the Faifley Mill.

Q. Where was it posted up?

A. It was posted up at the end of James Bryson's house.

Q. Is that in Faifley, or at Duntochar?

A. It is in Faifley.

Q. What title had that paper?

A. It was an Address to the Inhabitants of Great Britain and Ireland.

Q. Did you see any papers with the same title at that time posted up in Duntochar?

A. I did not see it—I was aware of it.

Q. Did you read that paper that you saw upon the house?

A. I did not read it at that time.

Q. You did not read it upon that day?

A. Not that paper.

Q. Did you read that paper at all?

A. Yes.

Q. When did you read it?

A. It was on the Tuesday.

Q. Was there a person of the name of M'Phie in your works?

A. Yes.

Q. Did you see M'Phie upon that Monday morning?

A. Yes.

Q. Did any thing particular pass between you and him?

A. Yes, he called upon me about nine o'clock, inquiring if I would pay his wages—his and the Duntochar people's wages.

Q. What did he say to you—do you recollect what expressions he used? did he tell you for what purpose they wanted their wages?

A. Yes, he told me that they were not working; that they had not credit, and wanted their wages on account that they were not working; and therefore had no credit at the shops, and wanted their wages.

Q. Did any thing else pass?

A. I told them I could not tell whether they would get their wages or not.

Q. Was Monday your pay day?

A. No.

Q. What is your pay day?

A. Once in four weeks.

Q. And upon what day of the week?

A. The Saturday.

Q. When had the men been paid their wages last?

A. I think it was two weeks from their pay; I think it was the middle of the pay, but I am not quite sure.

Q. Do you mean by that, that they had been paid the second Saturday before, or the fortnight before?

A. They were paid, I believe, a fortnight before.

Q. Did he assign any other reason why he wished his wages?

A. I do not recollect any reason more.

Q. You said that they had struck work; did he tell you the reason why they had struck work?

A. He said that he was afraid to work; they were afraid to work.

Q. Did he tell you of what they were afraid?

A. On account of this printed Address that had been put up.

Q. What further passed?

A. I told him, that I did not think there was any reason for their leaving work for that.

Q. Did any thing farther pass about that paper?

A. He asked me if I had seen the printed Address. I told him I had not; that I understood there was one put up, but I had not read it at that time; and then he shewed me one out of his pocket.

Q. Did you read that printed Address?

A. Yes.

Q. Did you return it to M'Phie?

A. No, I kept it.

Q. Have you got it now?

A. Yes.

Q. Produce it if you please?

A. He said this had been posted up, and pulled down.

Q. Was there any person along with M'Phie upon this occasion?

A. Yes, I think there were two of them, but I do not recollect; there was one of them, James Dunn, but I do not recollect who the other was; I think there were two besides M'Phie.

Q. Was he a cotton-spinner this third man?

A. Yes.

Q. How many cotton-spinners have you?

A. Twenty-nine or thirty.

Q. And do you mean to swear you do not know who that third man was?

A. I do not know who it was; I think there were three, but I do not know who the third man was.

Q. But you knew him to be one of your cotton-spinners?

A. I think he was one at the time.

Q. Had these cotton-spinners been at work in the preceding week?

A. Yes.

Q. Had they worked until Saturday?

A. Yes, until Saturday night.

Q. Had you upon the Saturday observed anything particular going on in your mill?

A. Yes; I observed a bustle in the mill, but I did not find out what it was at the time.

Q. Had you any conversation with any of your workmen?

A. Yes; I inquired of our spinning foreman if he had observed any thing particular in the mill.

Q. What is his name?

A. James Slimmond.

Q. What was the first communication you had with any of your workmen upon the Saturday?

A. None.

Q. Merely with the foreman?

A. Merely with the foreman.

Q. What was your first direct communication with the workmen upon the Monday morning?

A. I was down at the mill about half past six o'clock in the morning; the work people had gone into the mill, but they had not begun to work when I got there, but standing idle.

Q. Was Robert Munroe one of your workmen?

A. Yes.

Q. The other men at the bar?

A. Yes, they are all our workmen except M'Devitt?

Q. Did you see those men upon that morning?

A. I did not see them all that morning in the mill.

Q. Which of them did you see?

A. I saw William M'Phie and William Blair, I think.

Q. I do not mean actually in the mill, but about it.

A. I think I saw William M'Phie and William Blair.

Q. Were they in the mill, or about the mill?

A. They were in the mill.

Q. Did you see Robert Munroe there?

A. I do not recollect.

Q. I am speaking now of the first time you went there?

A. No, I did not see him.

Q. Had you any communication with any of the work men at that time, and what was it?

A. I had a communication with some of them; but I think them that I spoke too mostly are not here.

Q. Mention their names?

A. Alexander Lindsay was one, and then Archibald M'Lean.

Lord President.—Were the prisoners within hearing of that communication?

A. I think these two were within hearing.

Mr Hope.—Robert Munroe was there?

A. Robert Munroe might be there, but I did not observe him?

Q. The workmen of the mill were all there at the time?

A. They were all in their different classes.

Q. Did any communication come to you from the workmen, and what was that? I speak of the time when you first went to the mill on Monday morning.

A. I had a communication with M'Lean and Alexander Lindsay. He told me that they were striking work, for they were afraid of their own lives, and of the work being destroyed, if they continued at their work.

Q. Did they say any thing else?

A. I do not recollect exactly what they said.

Q. Did they say that they intended to strike work?

A. They intended to strike work on account of so many going about recommending them to strike work, and that there was no person working in the country.

Q. They were complaining that there were so many idle people going about without work?

A. Yes.

Q. Had you seen idle people going about when you came to the mill in the morning?

A. I was not in the way; I did not go along any public road to see them.

Q. Did you see a number of idle people going about that morning?

A. No, I did not.

Q. What answer did you make to this remark,—that they were in danger, and the work was in danger, and they meant to stop work?

A. I told him I did not see any reason for their leaving work, and there was no danger of the work being destroyed so long as they continued at work.

Q. Did any thing else pass upon this occasion in the morning?

A. I do not recollect any thing more.

Q. What was your next communication with the workmen that day, and at what hour was it?

A. I went and left that part of the works that morning.

Q. Did you return to the Duntochar Mill that morning?

A. Yes.

Q. About what hour?

A. About eleven o'clock.

Q. Had you any communication with your workmen there?

A. No.

Q. Not afterwards, in the course of that day?

A. None before that.

Q. Had you any further communication that Monday with the workmen at the Duntochar Cotton-mill?

A. I think none.

Q. Then the communication with M'Phie and James Dunn, was before you left the mill in the morning?

A. They came to me after that; I did not recollect that at first.

Q. Where were you at that time?

A. I was at the Faifley Mill.

Lord President.—Which of them came to you?

A. M'Phie and James Dunn.

Q. After eleven o'clock?

A. No, before nine.

Lord President.—Were they twice with you?

A. No.

Mr Grant.—He only corrects the place, my Lord.

Lord President.—Where was it you saw them—at Faifley Mills?

A. Yes.

Mr Hope.—Is Richard Thomson one of the cotton-spinners at the Faifley Mill?

A. Yes.

Q. Do you see him now at the bar?

A. Yes.

Q. Which is he?

A. He furthest off, (*pointing him out.*)

Q. When you went to the Faifley Mill, had you any communication with that man?

A. None.

Q. After you had been there for some time, and while you were there?

A. While I was there, I turned back again to Duntochar.

Q. Had you any communication with that man Thomson about the Faifley Mill?

A. About eleven o'clock I returned back; and there was Richard Thomson and other two, came down to call upon me; stating, that they understood that the Duntochar people were to get their wages, and to know if they were to get theirs.

Lord President.—Do you pay the Faifley people too?

Mr Hope.—They both belong to his brother. Did they assign any reason for asking for their wages on that day?

A. The reason, as they assigned, was, that they were afraid to work, and as they were not working, they had no credit; and they wanted their money that they had wrought for.

Q. Did they represent to you, that they had lost their credit by eleven o'clock that day?

A. Yes.

Q. You say, that they mentioned, that they had heard that the Duntochar people were to get their wages; had you, in point of fact, told the Duntochar people that they would get their wages?

A. No; I told them, that if one of them got it, it was likely the others would get it, but I could not tell till I got letters from Glasgow.

Q. Had you any other communication, subsequent to that interview with Thomson, with the people of the Duntochar Cotton-mill upon that day?

A. No, I think not.

Q. Had you any communication with the Duntochar people on the Tuesday?

A. I do not recollect any.

Q. Did your brother, Mr William Dunn, come down to Duntochar upon the Monday and Tuesday, or the Wednesday?

A. He was down upon the Tuesday, I think.

Q. Had you, in company with him, any conversation with any of the Duntochar people about the striking of work?

A. Yes, I recollect that I was along with my brother and two of the Duntochar spinners.

Q. Which two?

A. I think it was Robert Munroe and James Dunn.

Q. Where did this conversation take place?

A. It was down near the Duntochar mill.

Q. What was said by Munroe, or the other man, when they came?

A. I do not recollect.

Q. Had you sent for them, or did they come to you?

A. They came inquiring about their wages while my brother was there.

Q. Did they come on the part of the cotton-spinners of Duntochar generally, or for themselves?

A. I think they said they were deputed by the rest of the spinners to come.

Q. Did they urge you to give them their wages?

A. I think that my brother told them, that if they wanted their wages he would pay them, but to go and consult amongst themselves whether they were of the same mind as formerly.

Q. Did they state why they wanted their wages, or why they had struck work?

A. It was for the same reason I stated formerly.

Q. Have the goodness to repeat it?

A. It was in consequence of not getting credit.

Q. Did they tell you the reason for striking work?

A. That they were afraid to work.

Q. Did they state of what they were afraid?

A. They told us they were afraid of people coming from some distance, but they did not state where it was, and that they were afraid of the works being destroyed when they found people at work.

Q. Did they tell you what they were to do after they got their wages?

A. No, they did not.

Q. Do you mean to say, upon your oath, that they did not tell you what they were to do after they got their wages?

A. They stated that they did not know how soon they might be taken away, or called away—I do not recollect which it was.

Q. And was that the reason why they asked for their wages?

A. They asked for their wages in consequence of their not getting credit.

Q. Did they tell you where they were to go to after they were called away, or taken away?

A. No.

Q. Can you recollect the expressions that they used; was it called away, or called out?

A. I could not say; called away, I think.

Q. Did either you or your brother warn those men of the danger that they were running?

A. Yes.

Q. Did you give them any advice?

A. Yes.

Q. What did you say, or your brother?

A. I told them they were certainly doing wrong to leave their work.

Q. Did you tell them that there was any danger in what they were about, or your brother?

A. I do not know; I left them sometimes with my brother.

Q. Did either you or your brother tell them there was danger in their proceedings?

A. Yes, my brother stated to them that there was danger in the proceedings.

Q. What was their reply to that?

A. I do not recollect.

Q. To what purport was it—what was the substance of it?

Mr Grant.—We must have the words.

Lord President.—We cannot have the words, when a man does not recollect them.

Mr Grant.—It was ruled in Hardie's case.

Lord President.—This very day a witness has given the same evidence.

Mr Grant.—Yes, my Lord, and this day I have admitted many irregular things.

Lord Chief-Baron Shepherd.—Suppose he cannot give the specific words, he may give the conversation, as near as he can recollect.

Lord President.—No doubt about it, because no witness can repeat the words of a conversation.

Lord Chief-Baron Shepherd.—There may be cases where it is necessary to prove the specific words.

Mr Grant.—In Hardie's case, it was laid down in this way by Lord Chief-Justice Eyre. I understand the Court to have decided, that you may inquire into conversations. In the case of Franklin, who was just in the situation of a person connected with Hardie, Mr Erskine said, as to what he said, but not as to what he recollected. What they said I have no objection to.

Lord President.—There is no such rule.

Mr Serjeant Hullock.—The fact is, I cannot say that I collected from such a person, because that is my understanding; but I can say that I do not recollect his words, but the substance was so and so.

Lord Chief-Baron Shepherd.—He cannot state the impression on his own mind, but as near as he can state the words, it is evidence.

Mr Grant.—The question is, What is the purport and substance of what he said?

Mr Hope.—Yes.

Mr Grant.—Now, what is the answer?

Lord President.—Ask him what he said, and if he does not recollect the words, let him give the substance.

Mr Grant.—But not the purport.

Lord Chief-Baron Shepherd.—I take that to be the purport—where a man states the words, he must state the whole—where he gives the substance, he states the purport; therefore, it is only changing the term, because the stating the purport I apprehend to be stating the substance.

Mr Hope.—You said that your brother told them there was danger in their proceedings?

A. Yes.

Q. And then I asked what was their reply to that?

Lord President.—Give the words as near as you can, and if you do not recollect the words, give the substance as near as you can.

A. I cannot recollect the words—I do the substance.

Mr Hope.—Tell us the substance, and to what purport that conversation was?

A. That they were afraid to work.

Lord President.—Your brother told them that there was danger in what they were about—what was their answer to that?

A. I could not recollect what they said.

Lord President.—You said you could recollect the substance?

A. I cannot recollect any thing about it.

Mr Hope.—Do you mean, before Almighty God, to return that answer?

A. Yes, I do.

Q. That you do not know the meaning or purport of their reply?

A. Yes.

Q. Did any further conversation pass between you?

A. No, I cannot recollect it.

Q. Had any thing been said previously by those people?

A. I cannot recollect it.

Q. I will give you a little time to recollect?

A. I cannot recollect any more just now.

Q. What was the result of this application at that time

for their wages by the workmen? were the wages, in point of fact, paid?

A. Yes, they were paid.

Q. On what day were they paid?

A. They were paid, I believe, on Thursday.

Q. At what hour on Thursday morning or evening?

A. About mid-day.

Q. Had you any communication on Thursday with the workmen, before they were paid?

A. None.

Q. Any on the Wednesday?

A. No.

Q. Were the workmen idle during that time?

A. Yes.

Q. You mean to state, that you took no further charge of them?

A. They left off themselves.

Q. This is the Address that you produced, which you said William M'Phie gave you?

A. Yes, that is the Address.

Q. You read it at the time?

A. I put it in my pocket.

Q. And you have read it since?

A. Yes.

Q. Did you say that you had read that which you saw upon the Tuesday on Bryson's house?

A. Yes.

Q. Was it the same Address as that?

A. I think it was the same.

Q. Was it the same in substance?

A. It was the same in substance, but it was not the same paper.

Q. Addressed in the same way, and signed in the same way?

A. I think so.

Q. You have no doubt whatever that that is the Address which M'Phie gave you.

A. No.

Q. Bryson's is at Failley?

A. Yes.

Q. Do you know a person of the name of Reid, at Duntochar?

A. Yes.

Q. Did you see the Address posted up there?

A. I saw a paper there, but I did not read it.

Q. Did you see enough to lead you to believe it was the same paper?

A. I understood it was.

Q. You merely saw a paper stuck up against the wall?

A. Yes.

Q. How far is Faifley from Duntochar?

A. Not quite half a mile.

Q. Do you know a forge that belongs to Mr Edington?

A. Yes.

Q. How is the forge situate between Duntochar and Faifley?

A. About half-way between the two?

Cross-examined by Mr Grant.

Q. I think you have told us, that the reason that these people gave you for demanding their wages, was, that having struck work, they had no credit?

A. Yes.

Q. Do you happen to know, of your own knowledge, whether that is not consistent with the fact, whether credit was refused to any of the workmen by any of the shopkeepers?

A. The shopkeeper told me so himself.

Mr Serjeant Hullock.—That cannot be evidence.

Mr Grant.—No, we have the shopkeeper.—You have said that that paper was given you, I think, by M'Phie?

A. Yes.

Q. And he shewed it you as the reason that justified the fear of himself, and the other workmen, of continuing to work in the way that you have told us?

A. In consequence of the paper.

Q. You mean to say, that he represented to you, that in consequence of that paper, they thought it prudent not to work?

A. Yes.

Q. At the time that you got that paper from M'Phie, he told you that it had been posted up, and that he had taken it down?

A. He told me that it had been taken down.

Q. Did he tell you where he got it?

A. No.

Q. Had it the appearance of having been posted up and taken down, when he gave it you?

A. Yes.

Q. It has that appearance still?

A. Yes.

Q. It had been pasted?

A. Yes.

Q. Has that individual piece of paper been out of your possession from the time that M'Phie gave it you to the present?

A. No, it has always been in my possession.

Lord President.—It had not been all pasted over, otherwise he could not have got it down?

A. It appears to have been wafered or pasted at the corners.

Q. How long have you known the prisoner, who is now under trial, Robert Munroe?

A. I have known him these nine years.

Q. Has he been in your employment during these nine years?

A. Yes, all the time.

Q. And what was your opinion of his moral character?

A. He was a very attentive quiet man, as far as I have seen.

Q. And that has been during your acquaintance with him for nine years?

A. Yes.

Q. Do you know whether he has a father alive?

A. Yes.

Q. Do you know how his father was maintained?

A. I believe he was supported by him and his younger brother.

Q. What is the name of his younger brother?

A. Robert.

Q. This is Robert, the other is George?

A. Yes.

Q. Was he supported by the industry of these two young men?

A. As far as I understand, he was.

Q. Who supports him now?

A. I do not know.

Q. Do you know whether this young man, Robert, is married?

A. He is married.

Q. And you mean to say, that he has conducted himself in an orderly, and quiet, and industrious manner, during your acquaintance with him?

A. George Munroe.

Q. Robert Munroe?

A. Yes, both of them.

Mr William Dunn—*sworn.*

Examined by Mr Hope.

Q. I believe you are the proprietor of some cotton-works at Duntochar?

A. Yes.

Q. Did you receive any communication respecting the state of those works in the beginning of April last?

A. Yes.

Q. You do not generally live at Duntochar yourself?

A. No.

Q. Where do you live?

A. In Glasgow.

Q. And in the beginning of April, you received a communication about the state of those works?

A. Yes.

Q. On what day was that?

A. On the Monday.

Q. Did you go down to Duntochar?

A. On the Tuesday I went down.

Q. Early in the day, or late?

A. It was about twelve o'clock when I got to Duntochar.

Q. Did you find that the works were stopped when you got down on Tuesday?

A. Yes.

Q. Both the Duntochar and the Faifley Mill?

A. Yes.

Q. Had you any direct communication with the workmen of the Duntochar Mill after you got down?

A. On my going into the works, I found two or three of the spinners coming out from the works.

Q. At what time of day was this?

A. About twelve o'clock, I think; I cannot say exactly, but I think it was about twelve.

Q. Did you speak to them?

A. Yes.

Q. Was there any person with you at that time?

A. No, there was no person at that time.

Q. Which of the men were those?

A. There was one Munroe, I think.

Q. Do you see him here now?

A. I think this is him, (*pointing him out.*)

Q. What is his first name?

A. I think Robert.

Q. Do you know the names of either of the others?

A. I think the name of the other was Dunn; I do not recollect the name of any other.

Q. Tell us what passed between you—did you speak to them?

A. I spoke to them.

Q. Tell us what was said?

A. Mr Wilson had wrote me that they had applied for their wages on the Monday morning; and I spoke to them about having quitted their work, and recommended to them to return to their work. I think they said to me, if I remember right, that they were afraid to return to their work. I also stated to them, that I understood they wanted their

wages—that Mr Wilson had wrote me to that effect—and I recommended them to return to their work, and to allow their wages to stand over till the regular time of receiving them.

Q. When had they been paid their wages last?

A. It was not two weeks before, I think. We pay once a month; and I asked them if they still wanted their wages. They said—I cannot say which of them said it—that last night they had had a meeting, and they all wanted their wages; and I think that they stated that the grocers and shops would not give them credit while they were out of work.

Q. Did those two or three that you have mentioned say, that they were deputed by that meeting that you have mentioned to speak to you?

A. No; I will state exactly what passed. They stated that last night they had a meeting, and I advised them to go and speak to the rest, and see if they would not change their opinion to-day; this one (*Robert Munroe*) and the other went away to the rest, to see if they still wanted their wages, or would allow them to stand over; they went, and returned in the course of ten or fifteen minutes again.

Q. The same people returned?

A. Munroe and Dunn again.

Q. Had any person joined you by the time they returned?

A. I think there was no person joined me when they came back to me; my brother was with me a short time, but not all the time that I was with them.

Q. Tell us what passed on their return?

A. They said that they still wanted wages, and they wanted to know how soon they could get them.

Q. Did you ask those men what was their object, either upon that occasion, or the first time that you saw them that morning?

A. I do not remember having put that question.

Q. Did you put any question to that effect?

A. I think I mentioned the impropriety of leaving their work, and advised them to return.

Q. Did they tell you for what purpose they had struck work?

Lord President.—He has said before that they told him they were afraid.

Mr Hope.—Did they tell you of what they were afraid?

A. I do not say that they came to any explanation of what they were afraid of;—they said they were afraid to work, and I was insisting upon it, and recommending to them to return.

Q. After you reasoned with them upon the impropriety of striking their work, what reply did they make to that?

A. I think there was something passed, by their saying they wanted their wages, and wanted to know how soon they could get their wages—they did not know how soon they might be sent for.

Q. Did they tell you who was to send for them, or where they were to be sent to?

A. I think the words were, that they did not know how soon they might be sent for to join the rest.

Q. The rest of whom?

A. I did not put that question.

Q. Or where?

A. I think it was from Glasgow—that they expected information from Glasgow; and I think that is all that passed, as far as I recollect.

Q. Did you, besides telling them of the impropriety of their striking work, tell them that there was any danger in their proceedings?

A. I think I might state that.

Q. The question I put to you is,—Did you state that? You can hardly forget the particulars of so important a conversation?

A. I think I did say that there was a danger in it.

Q. Have you any doubt that you did say there was danger in what they were doing?

A. No.

Q. What made you say that?—what were the men doing?—what led you to tell them there was danger in their proceedings?

A. I was at Glasgow on all Monday, and on the Tuesday morning, and I heard a great deal of what was going on in Glasgow; many idle people going about.

Q. Did you explain in what the danger consisted?

A. No, I think not.

Q. What answer did they make to you then, when you told them there was danger in their proceedings?

A. I really cannot give you the words.

Q. I ask the substance and the purport of it?

A. I do not remember what reply they made.

Q. Did they say that there was no danger, or what did they say?

A. I think not; I cannot answer the question just now.

Q. Did those men, Munroe and Dunn, leave you after this conversation?

A. Yes.

Q. Had you any other conversation with the Duntochar work people on that day?

A. Not that day.

Q. Or with the Faifley?

A. On going to the Faifley works, I met with two of my work people at the mill.

Q. What were their names?

A. I think James Maxwell and Will Key.

Lord President.—We have not heard of them before.

Mr Hope.—It was for that purpose I asked their names. Did you return to Glasgow that day?

A. Yes, in the evening.

Q. And you had no other conversation with the Faifley workmen, except through Munroe and Dunn?

A. It was not on the Tuesday that this conversation took place with Maxwell and Key.

Q. On the Tuesday, had you any conversation with the Faifley people?

A. Yes, I saw several of them.

Q. Can you mention the name of any that you saw?

A. I saw a good many there.

Q. Had you a workman there of the name of Richard Thompson?

A. There was one there at that time.

Q. Did you see him there on the Tuesday?

A. No, I think not—at least I do not remember him at that time.

Q. Had the people at the Faifley works struck work also?

A. Yes.

Q. Then you returned to Glasgow upon the Tuesday?

A. Yes.

Q. Did you return to Duntochar again on Thursday?

A. Yes, I returned to Duntochar again.

Q. You have told us of this application by these people for their wages—in point of fact, were their wages paid by your orders?

A. Yes, on that day.

Q. You gave directions for the wages being paid?

A. Yes, and they were paid on Thursday.

Q. Were you in Glasgow upon the Saturday preceding those days that you have been speaking of?

A. Yes.

Q. What day of the month was that, do you know?

A. The first of April, I believe.

Q. Was Glasgow quiet at that time?

A. It was.

Q. I believe you have large works in Glasgow?

A. Yes.

Q. Iron works and cotton works?

A. I have one iron work in Glasgow, and another in the Calton of Glasgow.

Q. Had you occasion to be out upon the streets on Sunday the second of April?

A. Yes.

Q. Did you observe any paper posted up there at that time?

A. Yes, I saw some of them.

Q. What was the title of those papers—or had they all the same title?

A. Yes, those I saw posted up—I did not read any of them on Sunday—I merely saw them, and they were pointed at in the proclamations.

Q. Did you read any of them afterwards?

A. I have seen them since.

Lord President.—Did you read any that were posted up?

A. No, I read none of them.

Mr Hope.—Did you read any parts of any of them?

A. I think not—I might—I have seen some of the papers,—at least I saw one paper within these few days.

Lord President.—If you did not read those that were posted up, you cannot tell that what you saw afterwards were the same?

A. No, I read none of them.

Mr Hope.—Upon the Monday, did the workmen, in your works in Glasgow, strike work?

A. Yes.

Q. Do you know that the workmen, in a great number of manufactories and public works, struck work that morning?

A. I was informed so.

Q. In what state was Glasgow upon the Monday?

A. There were a great many people going about the streets.

Q. Operative workmen—the lower orders of people?

A. Yes, I think so.

Q. Were the streets crowded, and in confusion?

A. Yes, there was a great hinderance to business.

Q. Were any of those people moving about in bodies?

A. Indeed I cannot say whether they were moving about in bodies or not; but there were great crowds of people walking along the streets.

Q. What description of people were they—were they of the lower ranks of life?

A. I think they were; there were persons of all descriptions—but many of the operatives—a great number of them were weavers.

Lord President.—If there is a great crowd in any great town, there must be a great proportion of the lower orders.

Mr Hope.—What was the state of Glasgow on the Tuesday morning—was it in the same state?

A. I think it was at my own works, and saw very little of Glasgow on the Tuesday.

Q. Had you any opportunity of seeing it on Wednesday?

A. Yes.

Q. In what state was it in the latter part of that day?

A. There were great crowds going along the streets.

Q. Did you observe in what direction, or if they were going in any particular direction?

A. I was not a great deal upon the streets on that day—indeed I was very little in the streets that day.

Q. Were the shops in Glasgow generally shut on the latter part of Wednesday?

A. Yes, there were a great number of shops shut.

Q. Did you observe it?

A. Yes; I think about four o'clock I saw a great number of shops shut.

Q. How long did your works in Glasgow continue off working?

A. I believe on Monday morning there were a great many of my men began work, and continued till nine o'clock; and by the afternoon of that day they were all off.

Q. How long did they continue off—might it be the end of that week, or the beginning of the next week, or when?

A. I think that some of them returned on the Wednesday—no, not on the Wednesday, but on Thursday, a number of them.

Q. Did they return generally on the Thursday?

A. No, it was on the Friday they returned.

Q. Generally or partially?

A. There was a number of them—the number I cannot exactly say; but there was a distinct number of them returned on Friday.

Q. Do you know, from your own knowledge, whether the workmen of the different cotton-mills, and other works in Glasgow and the neighbourhood, returned to work on that Friday, or continued off still longer?

A. In some works they were not allowed to work the greater part of the week; they were willing to return on Fri-

day, but they were not allowed to begin work on Friday; and my opinion is, that they were not all admitted to work again till the Tuesday or Wednesday in the next week; but a great number of them were willing to return on the Friday.

Q. Did you, while you were at Duntochar on the Tuesday, see any paper posted there?

A. No, I did not.

JAMES SLIMMOND—*sworn.*

Lord President.—Do you reside at Glenhead, in this parish?

A. Yes.

Examined by Mr Drummond.

Q. Are you a spinning-master at Glenhead?

A. Yes.

Q. Were you there in the beginning of April last?

A. Yes.

Lord President.—What is Glenhead?

A. It is neither Faifley nor Duntochar.

Mr Drummond.—How far is it from Duntochar—is it part of Duntochar?

A. Yes, it is.

Lord President.—Is it a separate mill from Duntochar Mill?

A. Glenhead is what is called the Duntochar Mill?

Mr Drummond.—Whom does the mill belong to, where you are spinning-master?

A. Mr William Dunn.

Q. Do you recollect observing any thing particular on the first of April last, among the cotton-spinners there, on the Saturday?

A. Yes.

Q. What was it?

A. I recollect seeing a running backwards and forwards, from one flat to the other.

Q. That is to say, you saw the cotton-spinners running backwards and forwards, from one flat to another?

A. Some of the people were running backwards and forwards

Q. Did you see a person of the name of Stewart there at that time?

A. Yes.

Q. One of the spinners?

A. He was spinning.

Q. John Stewart?

A. Yes.

Q. He was spinning?

A. Yes.

Q. Did he shew you a paper?

A. Yes.

Q. Where did he produce the paper from?

A. He brought it from the wall of the house where his hat was hanging at.

Q. He brought it out of his hat, did he?

A. I am not sure whether it was in his hat; it was about it.

Q. His hat was hanging by the wall?

A. Yes.

Q. What was it?

A. It purported to be a proclamation, from what was called the Provisional Government, I think.

Q. Whom was it addressed to?

A. It was addressed to the Inhabitants of Great Britain and Ireland.

Q. It was a printed paper?

A. Yes.

Q. What hour of the day was this?

A. It was near eight o'clock at night, between seven and eight.

Q. What did Stewart say to you when he produced this paper?

A. I had challenged him respecting the running that I saw about the mill; and he began to deny it at first that he knew any thing respecting it; and after pressing him re-

specting it, he took down this paper, and said something to this effect, that that would explain it, if I would not tell the masters, something of that kind, he wished me not to tell them.

Q. What did you say to that?

A. I wished him to burn it.

Q. Why?

A. Because I thought it was a thing of a mischievous tendency?

Q. Did you say that to him?

A. Yes.

Q. Tell us what you said to him, as near as you can remember?

A. I cannot just recollect what I said, but it was to this effect, That I wished him to burn it, and let no person see it; he rather was not for doing it for some time, and then he promised that he would do it at last.

Q. Did you state any reason to him why he should burn it?

Lord President.—He has said, because he thought it was of a mischievous tendency.

Mr Drummond.—He did not say so to him?

A. Yes, I did.

Q. He at first rather declined it?

A. Yes; but afterwards he promised he would do it.

Q. Do you know what he did with it?

A. No, I cannot justly say; I never saw him more after he went from the mill at night.

Q. Did he say where he got that paper?

A. He said a man that called on him at the dinner hour, when he was out of the mill, had given it to him?

Q. What man?

A. He had never seen the man, he said; I asked him who the man was, he said he did not know him.

Q. Would you know such a paper again, if you saw it?

A. Yes, (*a paper was handed to the witness*), it was a paper similar to that.

Cross-examined by Mr Grant.

Q. You remember the Monday following the Saturday that you have spoken of?

A. Yes.

Q. Do you remember seeing any number of strangers about upon that day?

A. Yes; I did see a good deal of strangers, but I was little out, but any time that I was out, I saw a good deal of strangers walking about.

Q. Were you at the counting-house in the mill, when the work-people of the mill demanded their wages?

A. Yes, I think I was; I was present about the mill door, and pushing them in to their work; but whether I heard any of them go in to ask their wages or not, I cannot exactly say.

Q. At what time was it you were pushing them into their work?

A. It was about six o'clock.

Q. Do you remember whether Mr Wilson was there then?

A. Yes.

Q. He was come?

A. Yes.

Q. Did you go yourself, or were you with the people that went to ask Mr Wilson about their wages?

A. I did not go, I was pushing them into the mill; and after I got partly into the mill, I think they went into the counting-house.

Q. Did you go with them?

A. Yes.

Q. Did you hear what passed there?

A. I heard some little, but there was such a talking, one talking here, and one talking there, that one could hardly tell what it was, but what was just addressed to themselves.

Q. There was a general conversation among them, was there?

A. Yes.

Q. Can you recollect what that conversation was about? was it about receiving their wages, or any thing that had relation to their wages?

A. Yes, I think it was.

Q. Do you remember whether you heard any demand made of Mr Wilson, on the part of the workmen, that they should have their wages paid?

A. Yes; I think there was a demand made.

Q. Remember what reason was given for their making that demand, or whether they gave any reason?

A. The reason, as I could observe, appeared to be a kind of a terror that there was some——

Mr Serjeant Hullock.—What did they say?

A. They were asking their wages, or when they were to get their wages.

Lord President.—What reason did they give for asking their wages, for it was before their time of payment?

A. They gave the reason that there was a great deal of people they thought would come, and that some mischief might come upon the place.

Mr Grant.—You say you were forcing them in to go to their work—you have already said, I think, that they did actually give up work that day?

A. They were not stopped at this time.

Q. Did you endeavour to persuade them to go on with their work?

A. Yes.

Q. Did you succeed in that to any degree? did you prevail on any of them to go on with their work?

A. There were a good many of them that appeared to be saying, Let us go in to our work; I think there can be no danger in going in to our work.

Q. Upon this did any thing happen, or was anything said in your hearing?

A. Yes; I heard one call out, that if they went on with their work that day, there would not be a head left upon one of them before to-morrow night.

Q. Was the person that so exclaimed, any one of those men that you see standing at the bar prisoners there?

A. No.

Lord President.—Do you know who it was that cried out so?

A. Yes, I think I know the man.

Q. Who was it?

A. It was a man of the name of M'Lean.

Mr Grant.—What was his Christian name?

A. Neil M'Lean.

Q. Do you know where Neil M'Lean is now?

A. No; I cannot say positively where he is, but I think he is somewhere about Glasgow.

Q. Do you know this young man at the bar, Robert Munroe?

A. Yes.

Q. How long have you known him?

A. I have known him, I think, between ten and twelve years.

Q. Do you know his brother?

A. Yes.

Q. What do you think of them in point of moral character—do you think them industrious and inoffensive persons?

A. Yes.

Q. Do you know of their having a father, an old and infirm man?

A. Yes.

Q. Do you know whether he has been maintained by their industry?

A. I think he has been maintained by their industry,—by George Munroe sometimes,—that is my opinion.

Q. The other is married, is not he?

A. Yes.

Q. Do you mean to say since the marriage of the other?

A. I took it so from this, that the other was away from them, and he was still in the house with them.

Lord President.—Robert might have contributed to his maintainance also.

Mr Grant.—Robert Munroe contributed to his father's maintainance till he was married?

A. Yes.

JAMES CRAIG—*sworn.*

Examined by Mr Serjeant Hullock.

Q. Where do you live?

A. I live in the Slit Mill at Duntochar.

Q. Do you work there, or do you keep it? what situation are you in in that mill?

A. I am a blast-man in general.

Q. Then you are a smith at that mill, are you?

A. I work in the opposite shop.

Q. You work at the smith's shop there, do you?

A. Yes.

Q. Did you work there in the month of April last?

A. Yes.

Q. Do you remember the beginning of April, when the people stopped work there?

A. Yes.

Q. Do you remember the Monday?

A. Very well.

Q. Were you at your work on the Monday forenoon, about eleven o'clock?

A. Yes.

Q. Who was in the shop besides yourself?

A. There was only me at that time, and a boy.

Q. There were none but the persons who worked under you?

A. No, until about eleven o'clock.

Q. What took place about eleven o'clock?—did any body come to you?

A. Four or five men came into the shop.

Q. What did they do and want?

A. They were wanting pikes made.

Q. What sort of persons were they?—did you know any of them?

A. I did not know them.

Q. Have you seen any of them since?

A. Not to my knowledge.

Q. Should you know them again, if you were to see them?

A. No, I do not think I would.

Q. Did you make any pikes for them?

A. No; I got them out, and I continued at my work, and they came back again.

Q. Did you continue your work till you went to dinner?

A. Yes.

Q. How soon afterwards did you return to your place of work?

A. It was considerably after dinner before I returned; I went to dinner about twelve o'clock.

Q. What time did you return to your work after dinner?

A. Between four and five.

Q. Did you lock your place when you went out?

A. No.

Q. You left it on the sneck?

A. Yes.

Q. Did you find any body in when you went back?

A. The shop was full of people.

Q. What sort of people were they?

A. I could not say; they were just a promiscuous multitude of people.

Q. What number might there be of this multitude of people?

A. I cannot rightly tell.

Q. Whereabouts might the number be?

A. I suspect there might be from twenty to thirty, or thereabouts.

Q. What were they about?

A. I cannot tell. When I went to the door, they turned me out, and told me they had no use for me;—I could not recollect one of them.

Q. What were they working at or doing when you went in?

A. I could not tell what they were doing.

Q. When you went in, was your fire at work?

A. Yes, the bellows was going.

Q. They will not go by themselves, will they?

A. No.

Q. Did you see any body blowing them?

A. There would be some body blowing them when they were going.

Q. Did you see any body at the fire?

A. No, I could not see who was fireman.

Q. Do you know a man of the name of William Blair?

A. Yes.

Q. Was he there?

A. I think that he was there, but I could not tell what he was doing.

Q. Whereabouts was he amongst this multitude?

A. He was just amongst the rest.

Q. Were they all standing stock still?

A. I do not say they were standing stock still; they were moving backwards and forwards.

Q. What were they moving about?

A. Oh, I really could not tell; I did not see them doing anything.

Q. Did you see anything in their hands?

A. No.

Q. How long was it before they got rid of you?

A. I was no sooner in, than they just turned me out immediately; I was not half a minute there.

Q. Did you go away quietly then?

A. Yes.

Q. You did not attempt to return?

A. No; I was going away, at any rate, with some spades I had made.

Q. Do you recollect whether any of the persons who formed this multitude in the afternoon, were part of the persons whom you saw there in the morning?

A. I could not say that.

Q. You did not see Blair there in the morning?

A. No, he was not there in the morning.

Q. Had you any conversation with him in the afternoon? did you ask him what they were about in your shop?

A. No, I had no conversation with him; I did not get

into the shop at all, but only just to look into it, and they turned me out immediately.

Q. In the morning, the persons who came wished you to make some pikes for them?

A. Yes.

Q. Had they any pikes with them?

A. They had one.

Q. What was that for—as a pattern?

A. I suspect so.

Q. Did they shew it you?

A. Yes.

Q. Did you look at it?

A. Yes

Q. Was it like one of those, (*handing two pike-heads to the witness.*)

A. It was something after the nature of that.

Q. Did you take it into your hands to look at it?

A. Yes.

Q. And you examined it, did you?

A. I looked at it.

Q. And you refused to make any, I think you say?

A. Yes.

Lord Justice Clerk.—Is this shop where you were working what you call the spade-finishing shop?

A. No; I carry on the blacksmith line and the farming line.

Q. On your own bottom?

A. Yes.

Q. This is your own shop?

A. Yes.

THOMAS EDINGTON—*sworn.*

Examined by Mr Serjeant Hullock.

Q. Are you the proprietor of a forge at Duntochar?

A. Yes.

Q. Do you remember, early in April last, having occa-

sion to send any old files there, for any purpose, no matter what?

A. Yes, at the end of March.

Q. Do you remember what day of the month it was? was it the last day of March, or the first day of April?

A. Some were sent in the middle of March, and some on the first of April?

Mr Grant.—You have some memoranda; when were they made?

A. Soon after I heard of this business, I took this from the books?

Mr Serjeant Hullock.—Are they your own entries in the books.

A. Yes.

Mr Grant.—Do you enter them yourself?

A. The books are kept by my clerk.

Mr Serjeant Hullock.—Were the entries in the books from which that was taken in your hand-writing?

A. No.

Q. Some files were sent about the middle of March?

A. Yes.

Q. Were any more sent on the first of April?

A. Yes, there was.

Q. Can you tell any thing about the quantity?

A. There might be about three hundred weight.

Q. Do you know what became of them?

A. I heard afterwards.

Q. You do not know, of your own knowledge, what became of them?

A. No, I do not; I live in Glasgow.

Q. Have they ever come to your hands, wrought up in any particular manner?

A. No.

Q. They have been lost, as far as you are concerned?

A. Yes, they have.

Q. Had any part of the quantity which were sent in the middle of March been worked up for you before the first of April?

A. I really cannot tell.

Mr Grant.—Do you know any thing of any quantity of those files having been sent to Dumbarton Castle?

A. No, I do not.

Mr Grant.—We have that from his man.

Mr Serjeant Hullock.—There were a few broken files sent to Dumbarton Castle, the man said.

The Address was read, dated the 1*st of April*, 1820, *as follows:*—

"Address to the Inhabitants of Great Britain and Ireland.

"Friends and Countrymen,—Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have reduced us to take up arms for the redress of our common grievances. The numerous public meetings held throughout the country, has demonstrated to you that the interests of all classes are the same. That the protection of the life and property of the rich man, is the interest of the poor man; and, in return, it is the interest of the rich to protect the poor from the iron grasp of despotism; for when its victims are exhausted in the lower circles, there is no assurances but its ravages will be continued in the upper;—for once set in motion, it will continue to move till a succession of victims fall. Our principles are few, and founded on the basis of our constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt.—Equality of rights (not of property) is the object for which we contend, and which we consider as the only security for our liberties and lives. Let us shew to the world that we are not that lawless sanguinary rabble which our oppressors would persuade the higher circles we are, but a brave and

generous people determined to be free. Liberty or Death is our motto; and we have sworn to return home in triumph, or return no more!—Soldiers! shall you, countrymen, bound by the sacred obligation of an oath to defend your country and your King from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of military despotism, to the unrelenting orders of a cruel faction, those feelings which you hold in common with the rest of mankind? Soldiers! turn your eyes towards Spain, and there behold the happy effects resulting from the union of soldiers and citizens. Look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and the soldiery, happily accomplished without bloodshed. And shall you, who taught those soldiers to fight the battles of liberty, refuse to fight those of your own country? Forbid it, Heaven! Come forward then at once, and free your country and your King from the power of those who have held them too, too long in thraldom.—Friends and Countrymen! the eventful period has now arrived when the services of all will be required, for the forwarding of an object so universally wished, and so absolutely necessary. Come forward, and assist those who have begun in the completion of so arduous a task, and support the laudable efforts which we are about to make, to replace to Britons those rights consecrated to them by Magna Charta and the Bill of Rights, and sweep from our shores that corruption which has degraded us below the dignity of man. Owing to the misrepresentations which have gone abroad with regard to our intentions, we think it indispensably necessary to declare inviolable all public and private property;—and we hereby call upon all Justices of the Peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may receive that punishment which such a violation of justice demands. In the present state of affairs, and during the continuation of so momentous a struggle, we earnestly request of all to desist from their labour from and after this day, the 1st of April, and

attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguish the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed. We therefore recommend to the proprietors of public works, and all others, to stop the one and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to. And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their King, and treat them as such.

"By order of the Committee of Organization for forming a Provisional Government—Glasgow, 1st April, 1820.

"Britons! God, justice, the wishes of all good men, are with us; join together and make it one cause, and the nations of the earth shall hail the day when the standard of liberty shall be raised on its native soil."

Lord Advocate.—The proof is closed on the part of the Crown, my Lord.

Lord President.—As the evidence is closed on the part of the Crown, it is time we consider what is to be our further proceedings.—Have you any exculpatory evidence, Mr Grant?

Mr Grant.—Yes, my Lord.

Lord President.—A good deal of it?

Mr Grant.—We have a great number of witnesses, as your Lordships may suppose. How many we may call on this case, I cannot tell. I do not know that it will be necessary to call a great number; but it will certainly be necessary for us to call some witnesses.

Lord President.—In short, you have exculpatory proof?

Mr Grant.—Yes, my Lord, we have.

Lord President.—You would not wish to begin now with your opening, perhaps; it is now eight o'clock, (I know you do not speak long.) There is a considerable quantity of

evidence, which you will comment on with great ability. Then you have exculpatory proof, and you and Mr Sandford are entitled to sum up that proof to the Jury. Then the Counsel for the Crown will have a right to reply; and I must go through the case to the Jury. Now, I am afraid it is impossible that can be done within such reasonable time, as to leave the Jury their senses about them to consider of it. If we adjourn now, and you go over your case, and consider what you have to say, and consider the number of witnesses you have to bring, we shall be better able to go on to-morrow. As we must adjourn, this seems to be the natural time to do it.

Mr Grant.—We are under your Lordship's conduct entirely, and grudge no fatigue; but for your Lordships, and for the Jury, and for the time generally, I am persuaded that the course your Lordship points out is the best, not only to save fatigue, which your Lordships, from other circumstances, must have felt so much, but also to save a great deal of time in the end. There has been a great deal of evidence gone into, extremely extensive, which, with a little consideration, we shall get rid of in a few words; whereas, if we were now compelled to address your Lordships, we might occupy more of your Lordships' time.

Lord President.—That seems to be the pleasure of the Court. Gentlemen, you will understand you must speak to no person upon the subject of this trial, neither going nor coming from or to the Court. Persons will attend to you in the morning in getting what you want, and you may speak to them, of course, upon those subjects, but not upon the subject of this trial.

Adjourned till Thursday morning at ten o'clock.

DUMBARTON CHURCH.

Thursday, 27th July, 1820.

The Prisoner was set to the Bar, together with other Persons Indicted with him.

Lord President.—Who is to open the case?

Mr Grant.—With your Lordship's permission, my Learned Friend will open the case.

Lord President.—That is the practice, I believe.

Mr Sandford.—May it please your Lordship—Gentlemen of the Jury—The case upon which it is now my duty to address you, as junior Counsel for the prisoner, is one of the highest importance—of fearful importance to him, because on your verdict, this day, his life or death depends,—and of the utmost importance to you, and to every individual of this country, from the considerations which it involves. No one can deny, that while the law of Treason is, on the one hand, intended to defend the Government and the Constitution from the designs and attacks of rebellious and bad men, it is also, on the other hand, framed in order to protect and defend the liberties of the subject. The statutes which so carefully define the nature and extent of the crime, are our best safeguards that it will not be enlarged, or any now convicted by constructive interpretation.

Gentlemen, when I consider the magnitude of this case, and the duty I have to perform, I almost shrink from the responsibility attaching to it; but private considerations must not weigh with the advocate in his discharge of a public duty; and in addressing a British Jury, I know that I am addressing those who, by attention on their part, will make good for any deficiency on that of the Counsel.

Gentlemen, I thought that I should have had to apologize to you for the legal argument which, in the course of my address, I shall find it necessary to advance. But from the facts on which the Counsel for the Crown rest their claim to a verdict of guilty, and the arguments they urge in its support, I am sure there is not one of you, no, not an individual in this country, who would not wish to be fully informed as to that law from which their deductions are drawn, and which, it is pretended, warrant the conclusions to which they are anxious you should arrive. If circumstances of the nature proved may involve a man in all the danger of so weighty a charge as the present, no man can feel himself safe in a period of public commotion; but the words of the learned Foster state this with all the weight of his authority, and all the eloquence of his language: "The learning touching these subjects is a matter of great and universal concernment. It merits, for reasons too obvious to be enlarged on, the attention of every man living, for no rank, no elevation of life, and let me add, no conduct, how circumspect soever, ought to tempt a reasonable man to conclude that these inquiries do not possibly concern him, a moment's cool reflection on the utter instability of human affairs, and the numberless unforeseen events which a day may bring forth, will be sufficient to guard any man, conscious of his own infirmities, against a delusion of this kind." Perhaps, Gentlemen, you will think that for the future this advice will be attended to.

Gentlemen, you are aware, as has been stated by the learned Counsel for the Crown, that this indictment contains four counts or charges of High Treason; two of them founded on the 25th Edward III., and two of them founded upon the 36th of George III. Before the statute of Edward III. was introduced, it appears that there had been various attempts, on the part of the Judges of the land at that time, to stretch Treason beyond its proper limits. It is stated by Hale, that "accroaching of royal power was a usual charge of High Treason anciently, though a very uncertain charge; that no man could well tell what it was, nor what defence to make to it;" and after stating various instances of how Treasons were at that time construed, he ends by saying, "By

these and the like instances that might be given, it appears how uncertain and arbitrary the crime of Treason was before the statute of 25th Edward III., whereby it came to pass, that almost every offence that was or seemed to be a breach of the faith and allegiance due to the King, was by construction, and consequence, and interpretation, raised unto the offence of High Treason." Gentlemen, in order to prevent for the future there being any construction, or any interpretation of High Treason, that statute was passed, the words of which have already been read to you, but to which I must again request your attention. The preamble is in the following words: "Whereas divers opinions have been before this time in what case Treason shall be said, and in what not, the King, at the request of the Lords and of the Commons, hath made a declaration in the manner as hereafter followeth; that is to say, when a man doth compass or imagine the death of our Lord the King, or our Lady his Queen, or of their eldest son and heir; or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son, and heir; and if a man do levy war against our Lord the King in his realm, or be adhered to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and thereof be provably attainted of open deed by the people of their condition;" they shall be found guilty of High Treason.

Gentlemen, from this Act it appears, that there were two substantive charges of High Treason at that time established; the first was the compassing or imagining the King's death, the first count in this indictment; the second is, the actual levying war against his Majesty the King. Now, in the interpretation of the words compassing and imagining, Lord Coke, to whose authority I refer, but with whose words I do not think it necessary to trouble you, explains their meaning by putting the case of a subject, and what was in the old law held to be compassing the death of a subject. Gentlemen, it is apparent from his words, that the compassing and imagining the natural death of the King, and entering into any conspiracy by which his life might be attacked, or he himself deposed, or entering into any conspiracy to levy war against the King, which could not be done without danger to his life,

are treason within the statute of Edward III. I cannot exemplify this latter species of Treason better, than by referring to a case in the reign of Henry the IV., shortly after this statute. You are all aware, that Henry Percy of Northumberland levied war against the King; that in battle array he met his King, and was by him defeated. Now, it is impossible for you not to perceive, that he put the person of the King in danger; because if he had succeeded, it is evident he might have committed the same crime that Henry IV. committed when he deposed Richard II. Mr Justice Foster observes, the distance between the prisons and the graves of princes is very short, therefore, whatever is likely to endanger the life of the King is High Treason within this Act.

The next charge is levying war against the King.—Gentlemen, it has been held that there are two modes of levying war against the King; these may be either a direct levying war against the King's person, or (in the words of Mr Justice Foster, which I shall immediately read to you,) a constructive levying war, that is to say, a levying war in order to subvert some of the fundamental laws of the realm. The words of Mr Justice Foster are as follows:—"Insurrections, in order to throw down all enclosures, to alter the established law or change religion; to enhance the price of all labour, or to open all prisons; all risings, in order to effect these innovations of a public and general concern by an armed force, are in construction of law High Treason, within the clause of levying war; for, though they are not levelled at the person of the King, they are against his royal Majesty, and besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government too, by numbers and armed force."

Gentlemen, the same doctrine is also laid down by Lord Hale. Now, I have to request your attention to the legal distinction which it is necessary to draw; I have already shewn you, and admitted, that a conspiracy to levy war against the King directly, is a compassing or imagining his death; but I have to submit, that under the statute of the 25th Edward III., a compassing, that is to say, a conspiracy to levy war for the purpose of effecting objects of a public nature, such as overturning all inclosures, and opening all

prisons, is not a compassing or imagining of the King's death; and I have here to request your attention to the words of Mr Justice Foster. Again he states, "But a bare conspiracy for effecting a rising for the purposes mentioned in the preceding sections, and in the next, is not an overt act of compassing the King's death." You are here referred back to the two preceding sections; let us see what those two preceding sections contain. The one is what I have already read, "that insurrections to throw down all enclosures, to alter the established law, or change religion; to enhance the price of all labour, or to open all prisons; all risings to effect these innovations of a public and general concern by an armed force, are in construction of law High Treason;" and therefore, in the next section, you are told that a bare conspiracy for effecting a rising for such purposes, is not a compassing the King's death.

Gentlemen, I hope you understand the argument that I am now using; if from any deficiency on my part you do not understand it, I am happy to think it will be stated much more fully and clearly than I can do it, on behalf of the prisoner, by my learned Friend on the same side of the bar. Lord Hale uses almost the same words; he states, "In the county of Oxford divers persons conspired to assemble themselves, and move others to rise, and pull down enclosures; and to effect it, they determined to go to the Lord Norris's house and others, to take their arms, horses, and other things, and to kill divers gentlemen; and thence to go to London, where, they said, many would take their parts, and this appeared by their confessions; and it was agreed that this was Treason within the statute of 13th Elizabeth, for conspiring to levy war against the Queen, but was not Treason within the statute of 25th Edward III., because no war was levied, and that statute extended not to a conspiracy to levy war."

It may be proper for me to lay before you an illustration of this argument, which I shall do by calling to your recollection cases that actually occurred, before continuing my legal argument. In the beginning of the last century, an attempt was made by certain persons, Damaree and Purchase, to destroy all Presbyterian chapels; by this attempt they interfered with, and endeavoured to overturn, the established laws of the realm. They were consequently held to be guilty

of a *constructive levying of war* against the Majesty of the King. Again, there was an *actual* levying of war under Prince Charles Stuart, who claimed the throne of these realms—a levying of war which put the life of the King in danger, because many of the noblest and most powerful families of this land were united under a leader, in order to depose George the Second, and bring in a Pretender to the crown. Now, Gentlemen, it was impossible that such a war could take place without compassing and imagining the King's death. Putting out of view the ordinary vicissitudes of war, every adherent of the House of Stuart must have deeply felt the denunciations of the Government against him, and the danger which he incurred by failure. In this latter, therefore, there was a levying of war, which was both a substantive Treason in itself, and also an overt act of compassing the King's death. A conspiracy to levy this actual war has ever been High Treason; but a conspiracy to levy the constructive war, as before defined, was not High Treason under the 25th of Edward III.

Now, Gentlemen, in the 36th George III., there was a statute passed, making it High Treason to levy war against the King, in order to compel him to change his measures. And Gentlemen, what I have to submit is this, that although this new act makes that a substantive Treason which was formerly an overt act of the first two species of Treason, under the 25th Edward III., yet it does by no means alter the law, or make that a substantive Treason now, which was not a substantive Treason then.

Gentlemen, as an authority on this subject, I do not know that I can refer you to a higher than that of the late Lord Chief Justice Ellenborough; and in stating the law of Treason in the charge to the Jury, in the case of Watson, he says, "There has been another statute lately passed, namely, in the 36th of the present King, not so much enacting any new Treasons, as declaring those things to be substantive Treasons which had been, by various constructions, from time to time, made upon the statute of the 25th Edward III., deemed the strongest and most pregnant overt acts of the several Treasons specified in that statute." He then goes on to state, "but on this particular head of Treason, the compassing and imagining the King's death, I do not think

that the facts of this case require that I should dilate or discuss the subject more at large than I have already done. A count of this head of Treason was not improperly inserted in this indictment, and the facts charged, as far as they are evidence of an intention to depose, are evidence also of compassing and imagining the death of the King." He then goes on again to state, "These four charges are competently framed upon the language of the statute of 25th Edward III. and 36th George III., which latter statute *is not directly introductory of any new law on the subject of Treason, except inasmuch as it makes, in certain instances, that which was before evidence in the way of overt acts of the crime of Treason*, under the 25th Edward III., in future substantive Treasons of themselves, under the statute of 36th George III." So that, Gentlemen, you have it here distinctly laid down, that what was *not* an overt act of compassing the King's death under the 25th Edward III., is not a substantive Treason under the 36th George III. Therefore, Gentlemen, before you can find the prisoner at the bar guilty upon the first count in this indictment, you must have it distinctly made out in evidence before you, that he either compassed or imagined the natural death of the King, which must be shewn by an overt act, or that he levied war against the King, or that he entered into a conspiracy to levy direct war against the King, in order to compel him, as an individual, to change his measures. Under the second count of the indictment you cannot find the prisoner guilty, unless it is proved that he did *actually* levy war against the King;—nor is it possible for you to find a verdict of guilty upon the third or fourth counts of the indictment, unless you are convinced that there was an actual conspiracy existing for deposing the King from his royal dignity,—and a levying of war against his person, to compel him, as an individual, to change his measures.

Now, Gentlemen, whether the facts laid before you in evidence amount to overt acts under any one of those different counts, you, and you only, are the judges. You are not to be told what verdict you are to return, as to whether the Treason charged has been committed or not, from any source however high; but you must be convinced in your own minds that a conspiracy to commit some of those substantive Treasons did exist, and that this is proved against the prisoner at

the bar by overt acts of which he was guilty. Gentlemen, the compassing of the crime of High Treason, is a question of fact which belongs to the Jury, and to them alone, to decide. They only are to determine whether certain overt acts are sufficient proof of criminal intention. You are aware that in every crime the criminal intention is the subject of punishment; and especially in Treason, where it is the main essence of the offence.

Gentlemen, what I now state is laid down by the highest authorities, and the first authority on the subject to which I would wish to call your attention, is that of Lord Coke. In commenting upon the statutes of Edward III. he says, "In this branch four things are to be observed; first, this word *provably*, that is, upon direct and manifest proof, not upon conjectural perceptions, or inferences or strains of writ, but upon good and sufficient proof; and herein the adverb *provably*, hath a great force, and signifieth a direct and plain proof, which word the King, the Lords and Commons in Parliament did use, for that the offence was so heinous, and was so heavily and severely punished, none other the like; and therefore the offender must *provably* be attainted, which words are as forcible as upon direct and manifest proof. Note, the word is not *probably*, for then *commune argumentum* might have served, but the word is *provably* be attainted." Gentlemen, you observe from this passage, how cautiously, how carefully, Lord Coke labours to shew that no Jury can convict of High Treason, except there is a direct and manifest proof of such High Treason laid before him.

Gentlemen, Lord Hale states, "compassing or imagining, singly of itself, is an internal act, and without something to manifest it could not possibly fall under any judicial cognizance, but of God alone; and therefore this statute requires such an overt act as may render the compassing or imagining capable of a trial or sentence by human judicatories."

Therefore, Gentlemen, it is evident, that you are, in considering whether the charge of High Treason has been made out against the prisoner, in the first place, to be convinced in your own minds, that a conspiracy to depose the King did exist; and in the second place, you must be convinced, that the prisoner at the bar has been a party to that conspiracy; to such an overt act as must plainly induce you, and every

manner in which the old man Wilson was examined by the learned Serjeant, and I am sure there was not one of you that must not have felt that the witness was giving a full and fair account of what he knew. I think it right to bring this to your attention, because I am sure it will have a proper impression on a Scotch Jury.

Now, Gentlemen, let us look at this evidence. The whole of it, so far as I can recollect, amounts to this,—that there was a placard posted up upon the Sunday, nobody knows by whom;—that on the Monday morning a number of the cotton-spinners at Glenhead and at Faifley-mill, struck work; and it has also been proved, that in a forge between Faifley and Glenhead there was a manufactory of arms for an army that was collected to overturn the Constitution, and a few arms were made. And how is this connected with the prisoner at the bar? Why, it is proved that this man having struck work in the morning, was seen standing in that forge; he is not ascertained ever to have put a hand to a pike in the forge; he is not proved to have been assisting M'Devitt, or to have carried any pikes from the forge to be made; but there he was for a few minutes, and he was seen lifting something from the floor, but what, the witness cannot tell. You will look at your notes, and see whether I am correct. My learned friend says, Robert Munroe was not seen there; the words of the witness are, that he did not see them (the Munroes) do any thing, except that one of them lifted up something; but which of them did this, nobody knows.

Gentlemen, the prisoner at the bar is not seen at the forge afterwards; the next day he is said to have been seen grinding something. And what did this turn out to be? We heard a deal of examination about this grinding-stone, and we thought something was to be made out; but it ended in the proof that he was seen grinding a plane. This plane, I presume, the learned Counsel wished to argue, was the weapon with which the prisoner was to assist in subverting the Constitution. He was not seen any more on the Monday, till he was observed in the grinding-mill of a person of the name of Clarke. Now, Gentlemen, you are called upon, on such evidence as this, to find this man guilty of the greatest crime that can be committed, and to return your verdict, by which he is to be put to death. Good God! Gen-

tlemen, was there ever such a case of High Treason brought before a Court? I say, if this is High Treason, there is no definition to the crime.

Gentlemen, during that Monday, we shall prove that the prisoner left the forge immediately after he had been seen there, and went to walk about the country—surely not very like a man engaged in a dreadful conspiracy; we shall prove, that he met with an acquaintance, and with him he walked to the grinding-mill, where he remained a short time, and left it—still not very like a man engaged in a conspiracy.

But let us next come to their great overt act, striking work, and see what they have made of it. Why, it is proved, that, after the placard had been posted up, it had the effect of intimidation upon the workmen at the Faifley cotton-mill, where the prisoner was not, and of intimidation at the Glenhead-mill, where the prisoner was. Now, Gentlemen, it is laid before you, in testimony which for one instant you cannot doubt, that these men struck work, not to engage in any conspiracy against their King, or against their country, but because they were afraid of the effect their disobedience to the placard might have upon their interests and their masters' property. Gentlemen, that such was the fact, has again and again been sworn to by the witnesses for the Crown; however, we shall make the evidence stronger; we shall prove, by various witnesses, that such was the only idea that they had. Gentlemen, I admit it has been made out in evidence that one or two men had some further intentions, though what these were is not known; for instance, there is a man who comes forward to Wilson to demand his wages, and he says they are going to get their rights—do not you remember what this old gentleman declared was the feeling of the greater number of those present?—He swore that there was an instant appearance of disapprobation, and that he considered them to have said, that they did not want to get their rights, but that they wanted money, because they could not get credit at the different shops, and that they were afraid to work.

Now, Gentlemen, are you to be called upon to find a man guilty of High Treason; and is it to be laid before you as an overt act of High Treason, because that man, along with others, struck work, from intimidation? Can you, in an act

so occasioned, find a guilty intention of levying war against the King, and against the Government? or do not you at once perceive that men in the lower orders were most likely to be actuated by a very different feeling? Was there a man, I do not say in the same rank of life with the men at the bar, but even of stronger mind and higher rank, that did not feel intimidation at that Address?—not intimidation to prevent his duty being done, but to raise the belief that great and impending danger threatened the country? Gentlemen, the effects of intimidation are different, as the minds of those upon whom it acts are constituted. I have no doubt, that upon you, as upon the greater part of the Yeomanry of the country, it had the effect of causing you to rally round the standard of the King, in defence of all those blessings that are most dear to us; but on men of weaker mould, fear for personal safety may easily be supposed to have arisen.

Now, the Counsel for the Crown have laid much stress upon the fact that has been proved, of the prisoner at the bar, and those with him, demanding their wages. But has it not been proved that this demand was made, because the shopkeeper refused to give them credit. We shall bring additional evidence to this fact, and prove the refusal by the evidence of Mr Bryson, the shopkeeper himself, who was the grocer from whom they got goods, and who did refuse them credit; therefore, we get rid of all the circumstances to infer conspiracy, except that circumstance of the man being seen in the forge while the pieces of iron supposed to be pikes were making. Upon this subject, Gentlemen, observe what one witness says—he admitted he struck work at Faifley, and the reason he gives is, that there was nobody to work with him, and he was wandering about with nothing to do, and went without any object to the forge. Now, I say, if this prisoner at the bar is guilty of High Treason for having been there, that witness was also guilty of High Treason for the same act. Is it not, Gentlemen, as likely as not, that the prisoner at the bar, idle and wandering about, saw a crowd, and went into the forge to see what was going on? Admitting, therefore, that he was present when a pike was made, does that shew the guilty intention—does that make out the guilty mind? I submit there is no man who can for one instant suppose that.

Gentlemen, this is the whole evidence on the part of the Crown; it will be gone through more minutely by my learned friend; but I am in your recollection whether I have not stated every thing which has been made out, and which is alleged to be an overt act. Now, Gentlemen, if you have not a conspiracy proved, in which the prisoner at the bar is likewise proved to have taken an active part, you cannot find him guilty of High Treason.

It may be unnecessary in addressing a British Jury, but I cannot help warning you to guard against any impression from without. I mean, that you are to take nothing for granted, except what has been laid in evidence before you yesterday. You are not, because you have heard of conspiracies existing, or because you have heard that men have been convicted of being guilty of High Treason, to take it for granted that a conspiracy did exist; but you are to look over the evidence laid before you, and to consider whether, from that, any conspiracy, or any rebellion against the King, is proved.

Gentlemen, in considering this case, you also ought to remember, that you are bound by the oaths you have taken, by the duty you owe to God, in whose house you now are, to your country, and to yourselves, if there is a doubt on your minds as to whether this prisoner is guilty or not, to interpret it in his favour;—but more, I say you are bound to acquit him. That, Gentlemen, will be told you from the Bench—it will be told you from the quarter from which every thing that comes must be respected—that you, to do your duty as Jurymen, must pronounce a verdict of acquittal.

Gentlemen, I shall not detain you longer. But in considering your verdict, remember it has been proved, that previous to the first of April, the prisoner at the bar was honest, sober, and industrious. He did his duty in that station of life in which he is placed, contentedly and well; and it is not very likely, that so acting, he should all at once forget his duty to his God, and to his King, and become a traitor and a rebel. He has been proved to be a good son—to be the prop of his father's old age—and the support of his declining years,—let not then your verdict be such as to bring the old man's grey hairs in sorrow to the grave.

EVIDENCE FOR THE PRISONER.

JAMES SLIMMOND, Junior—*sworn.*

Examined by Mr Grant.

Q. Are you a workman at Duntochar mill?

A. Yes.

Q. Were you a workman there in the beginning of April last?

A. Yes.

Q. What were you there?

A. A cotton-spinner.

Q. Do you remember the time when the cotton-spinners there gave up work?

A. Yes.

Q. What day was that?

A. It was on the second of April, on a Monday.

Q. The first Monday in April?

A. Yes.

Q. Do you know any thing of the cause for your all having struck work at that time?

A. I do not know the cause of us all; but, for myself, I was intimidated; and the report that was flying was, that we were in danger.

Mr Serjeant Hullock.—That cannot be evidence.

Mr Grant.—I apprehend it is evidence.

Mr Serjeant Hullock.—It cannot be evidence, a flying rumour.

Lord President.—Ask him what intimidated him.

Mr Grant.—What was it intimidated you?

A. The reports that were flying about.

Mr Serjeant Hullock.—I object to that. I say no evidence can be given of any report; he may state what he did himself, but he cannot state what other persons did.

Lord President.—No; he says what intimidated him was a report.

Mr Serjeant Hullock.—I do not object to that.

Mr Grant.—What was it that intimidated you? what was the ground of your fear?

A. The ground of my fear was, that upon the paper that was put up the contents of it intimidated me.

Q. Therefore, you mean to swear—

Mr Serjeant Hullock.—Ask him what he means to swear.

Mr Grant.—Do you mean to swear, that it was the fear resulting from the terms of that paper that operated upon you, and that you had no other motive for stopping work?

A. No; I had no other motive.

Cross-examined by Mr Serjeant Hullock.

Q. When did you see this terrifying paper first?

A. It was on a wall.

Q. Had you seen it before that? who shewed it to you on the Saturday?

A. It was James Slimmond, senior.

Lord Justice Clerk.—You did not see it on Saturday?

A. No, I did not.

Mr Serjeant Hullock.—Did not you know that Stewart had it in his possession?

A. No.

Q. You never heard of it on Saturday?

A. No.

Q. You gave up work on the Monday?

A. Yes.

Q. Where did you go to relieve your mind?

A. I went to take a walk.

Q. Who walked with you?

A. Another lad—James Paul.

Q. Did you set out to walk immediately?

A. No; we went home for our breakfasts.

Q. And after that you set out upon a walk?

A. Yes.

Q. Were there only you two?

A. Just us two.

Q. What place did you go to next?

A. We came down by Kilpatrick.

Q. Which mill did you go to?

A. We *goed* to no mill.

Q. What time of the day were you at the forge?

A. I was not there.

Q. Was your companion there at all?

A. Not to my knowledge.

Q. Were you with him all the day?

A. Not just all the day.

Q. How long were you with him?

A. I left him after dinner.

Q. Did you dine together then?

A. No; we came together after dinner.

Q. You returned to your respective homes to dinner, and after that you again joined?

A. Yes.

Q. Did you renew your walk in the afternoon?

A. A little.

Q. Where did you go?

A. We came the same road.

Q. To no place, and back?

A. No.

Q. After that, you went home?

A. Yes.

Q. And staid at home all the night?

A. Yes.

Q. Where was your father? he was the spinners' master?

A. Yes; I could not say where he was when I was absent.

Q. Was he at home when you went home?

A. He was in the mill.

Q. But you did not go to the mill?

A. No.

Q. When did you return to your work?

A. I believe it was nine days.

Q. It was nine days before you recovered that fright?

A. I would have gone to the mill that day had it went on.

Q. Had the mill gone on?

A. Yes.

Q. All the people were out, and the mill could not go on without the work-people?

A. No.

Q. It continued nine days without working?

A. Yes.

Q. Then did you all return, or only some of you?

A. All returned that were there at the time.

Q. What became of the others? have they never returned since?

A. No.

Q. Some of the people were so terrified, they left their country, and never came back?

A. I cannot say.

Q. You have never seen them since?

A. No, some of them.

Q. How many might there be that you have never seen since?

A. I believe there were three or four—three.

Q. There are three of them you have never seen since?

A. Yes.

Q. And the other persons returned to the mill to work about nine days afterwards?

A. Yes.

Q. Were any wages due to you?

A. No.

Q. How did you employ yourself in that interval of nine days? were you employed in walking?

A. Yes.

Q. Did your friend Paul walk with you all that time?

A. No.

Q. Did you take solitary walks, or in company.

A. I took solitary walks, and at other times I had people with me.

Q. Were you ever in Glasgow or Paisley?

A. Yes; I was there one day—that was Saturday.

Q. Were you at Paisley before that?

A. No.

Q. You went to Glasgow on Saturday?

A. Yes.

Q. Who accompanied you thither?

A. My brother, Samuel Slimmond.

Q. Did you see any of the prisoners at the bar, on the Tuesday, or Wednesday, or Thursday, any where?

A. No.

Mr Grant.—They were taken up on Thursday; my learned friend knows he must not give evidence of what took place after they were taken up.

Mr Serjeant Hullock.—That is perfectly new, and altogether incorrect. Did you see them on the Tuesday, the Wednesday, or Thursday?

A. I could not say I saw Robert Munroe on the Wednesday, and I saw him upon the Thursday.

Q. What time of the Thursday did you see him?

A. About eight o'clock.

Q. Was he at home?

A. He was standing at his own door.

Q. Where did you see him on the Wednesday?

A. At the same place.

Q. You saw him at no other place on the Tuesday or Wednesday?

A. Not that I recollect.

Q. Were all the workmen off at Faifley, and Glenhead, and Duntochar on those days?

A. At Duntochar, I cannot say.

Q. Is not Glenhead the same place?

A. It is a little above.

Q. Are the Glenhead and Duntochar mills the same?

A. It is a little from Duntochar.

Q. Were the men off work at Faifley too?

A. To my knowledge they were.

Q. The paper mills, did they continue to work?

A. No.

Q. What other mills were off work?

A. I cannot say.

Q. You stated that the Address was the ground for your leaving work; when was it that you first saw that Address?

A. It was about half past six on the Sunday morning.

Q. You saw it at the end of Bryson's house?

A. John Reid's house.

Q. That was not the only Address you saw—you saw another?

A. Yes.

Q. At Bryson's?

A. Yes; when I went to church I saw one there.

Q. Did you read that against Reid's house?

A. I heard it read.

Q. Who read it to you?

A. I could not tell the man.

Q. Were there several persons reading?

A. A great many.

Q. The number of people I suppose attracted your attention; you were drawn to the spot by the party?

A. Yes.

Q. When you went up, the men were reading it aloud?

A. No.

Q. He began after you went up?

A. I stood a little, and one went up.

Q. You heard him read it?

A. Yes.

Q. He read it aloud, so that all the party could hear it?

A. I scarcely heard it.

Q. Did you hear it, think you?

A. I heard a good part of it.

Q. Did you hear that part about striking work?

A. Yes.

Q. What did it say?

A. I do not recollect the words of it; but it wished all masters of public and private works to shut up the one and close the other, for that they would not sustain any damage that was done.

Q. Did you read that against the other house afterwards —Bryson's?

A. No.

Q. How do you know it was the same sort of thing?

A. I saw the Address to the Inhabitants of Great Britain and Ireland.

Q. It was the same beginning?

A. Yes.

Q. Where was there another up?

A. I could not say where there was another up.

Q. Did you see none any where else?

A. Yes; I saw another.

Q. Where did you see another?

A. In one of the flats of the mill.

Q. The Glenhead mill?

A. Yes.

Q. Was it stuck up?

A. No; I saw a man take it out of his pocket.

Q. What is his name?

A. John Stewart.

Q. When was that?

A. Upon the Monday morning.

Q. Were you all together—all the spinners?

A. No; we were not all there.

Q. Who besides yourself—were the Munroes?

A. For Robert Munroe, I cannot say whether he was or not, and George Munroe was not there.

Q. Whether Robert Munroe was, you cannot say?

A. No; I cannot.

Q. Was it read by him, or what did he do with it when he brought it out of his pocket?

A. He gave it to another man at the bar here, William M'Phie.

Q. What did M'Phie do with it?

A. He gave it to Mr Dunn.

Q. Was this before you applied to Mr Wilson?

A. I really could not say.

Q. You were with the spinners when they applied to Mr Wilson?

A. No; I was not all the time.

Q. Were you present at any conversations with Mr Wilson or Mr Dunn?

A. No.

Re-examined by Mr Grant.

Q. You have said, that at eight o'clock on Thursday morning you saw Robert Munroe, the prisoner, at his own house?

A. Yes; on Thursday morning.

Q. Was he then standing at his door, at his own house?

A. Yes, at his own house.

Q. Do you know at what time he was apprehended?

A. I could not say at what time he was apprehended.

Q. Do you know that it was upon the Thursday?

A. Yes, it was upon Thursday.

Q. Do you know near about the hour at which he was apprehended?

A. No, I could not really say.

Mr Grant.—We will prove that he was apprehended an hour after, my Lord.

Lord President.—You say there was a great crowd round this paper, when it was read by that person you did not know; can you name any persons who were present in that crowd besides yourself?

A. I cannot name any one; there was a great crowd at the outside of it.

Lord Justice Clerk.—You cannot name any of the parties standing round?

A. No.

Lord President.—Had you any conversation with any of the people?

A. No.

Lord Justice Clerk.—Was it a crowd of the spinners of that mill?

A. There were a great many people, and I did not see them if they were there.

Mr Grant.—Perhaps your Lordship will ask him, whether there were a great number of people.

Lord Justice Clerk.—Upon that day or the next, did you see any crowd of strangers there?

A. Yes, on both the days.

Q. Both on the day you heard it read, and the next day?

A. Yes.

Lord President.—Persons who did not belong to Glenhead or Faifley?

A. Not to my knowledge.

Q. You did not know them before.

A. No.

Q. Did those strangers offer any violence or threats to you or any person?

A. They offered none to me.

Q. Did you hear them offer any to any body else?

A. No.

MATTHEW FLEMING—*sworn.*

Examined by Mr Grant.

Q. What employment are you?

A. A cotton-spinner.

Q. In whose mill are you?

A. I am employed by Mr William Dunn.

Q. Were you in his employment in the beginning of April last?

A. Yes.

Q. At what mill?

A. Duntochar.

Q. Do you remember the workmen of Duntochar mill striking work?

A. Yes.

Q. When was that?

A. Somewhere about the beginning of April.

Q. Were you one of those that left off work?

A. Yes.

Q. Do you know a person of the name of Blair, who was one of your fellow-workmen?

A. Yes.

Q. Had you any conversation with Blair upon the subject of your leaving off work?

A. Yes.

Q. Can you tell what it was?

A. Yes.

Q. When was it?

A. It might be about a fortnight before they stopped.

Mr Serjeant Hullock.—I object to that evidence; the man who is accused cannot have evidence given of what he says, except it is part of the *res gesta.*

Mr Grant.—My Lord, I do not think it is worth while to take up the time of the Court with an argument.

Lord President.—I think if any thing, it is against you, for it could not be that Address.

Mr Grant.—I shall take the case generally. Then what was the cause of your striking work upon that occasion?

A. I struck work myself, because the rest did it.

Mr Grant.—Then I will call my next witness; it was chiefly to the conversation that this witness was called.

GEORGE ANDERSON—*sworn.*

Examined by Mr Grant.

Q What are you?

A. A cotton-spinner.

Q. Whose employ are you in?

A. Mr Dunn's.

Q. Were you in his employ in April; and in what mill?

A. At Duntochar mill.

Q. In the beginning of April?

A. Yes.

Q. Do you remember the people striking work at any time there; and when do you remember the day?

A. I do not remember the day of the month, but it was on Monday.

Q. Was John Stewart there?

A. Yes.

Q. Do you remember his shewing a paper which he took out of his pocket?

A. Yes.

Q. What did he propose to do with that paper?

A. To shew it to Mr Dunn.

Q. Did he give any reason for shewing it to Mr Dunn?

A. To shew the danger of working.

Q. Then did you think there was any danger in continuing to work?

A. I cannot tell.

Q. What day was this?

A. On Monday.

Mr Grant.—We have heard it before.

Lord President.—We want to know the time of the day. What hour of the Monday was it?

A. I cannot tell, it was on Monday morning.

Q. Did you see Robert Munroe on that Monday?

A. I do not recollect.

Q. You do not recollect seeing him on that Monday?

A. No.

Q. You yourself left work that day?

A. Yes.

Q. Where did you go?

A. I went home.

Q. Did you go any where else after going home?

A. Yes.

Q. Where?

A. I went and took a walk.

Q. Where did you walk to?

A. I went to West Kilpatrick.

Q. Did you meet any body of your acquaintance there?

A. I do not recollect.

WILLIAM RANKIN—*sworn.*

Examined by Mr Grant.

Q. What are you?

A. A cotton-spinner.

Q. Whose employment were you in in April?

A. Mr Dunn's.

Q. At what mill?

A. Glenhead and Duntochar.

Q. Do you remember their striking work at that mill?

A. Yes.

Q. When was that?

A. On the 3d of April, I think.

Q. What was the reason of their striking work, so far as you know?

A. It was principally from fear.

Lord President.—Was that your own reason for striking work?

A. Yes, it was.

Mr Grant.—Did you see the prisoner Robert Munroe, upon that Monday?

A. I saw him in the mill that day.

Q. Did you see him after you had struck work?

A. I do not recollect that I did.

Cross-examined by Mr Hope.

Q. You struck work upon the Monday, you say?

A. Yes.

Q. When did you return to work?

A. On Thursday come eight days.

Q. That was the 12th?

A. I cannot say what was the date.

Q. When did the others return to their work?

A. On the day before that, I think, the general part of them.

Q. The general part of them did not return till the Wednesday?

A. The general part of them were at their work the day before I was at work.

Q. You say you saw Robert Munroe in the mill on the Monday morning before you struck work?

A. Yes.

Q. Did you see Mr Wilson that morning in the mill?

A. I did.

Q. Was that at the time that you saw Robert Munroe?

A. Yes.

Q. Did you go into Mr Wilson's room along with the other cotton-spinners?

A. Yes.

Q. And Munroe was along with you at that time?

A. I cannot say whether he was or not at that time; I saw him when I was in the lobby.

Lord Justice-Clerk.—You have said that you remember the striking work, and that it was principally from fear,—what kind of fear do you refer to?

A. There was a general rumour through the place, that a band of ill-disposed persons had threatened to destroy Mr Dunn's property, and those who worked there.

Q. That was the sort of fear you allude to?

A. Yes, that was what operated on my mind.

Mr Grant.—Will your Lordship ask, whether there were any strangers?

Lord Justice-Clerk.—Were there any strangers about the place?

A. Yes, the place was filled with strangers.

Q. Was that on Monday?

A. Yes.

Lord President.—Did those strangers conduct themselves peaceably?

A. As far as I saw.

NICOL FERGUSSON—*sworn.*

Examined by Mr Grant.

Q. Were you a workman at the mill at Duntochar in April last?

A. Yes.

Q. That is Mr Dunn's mill?

A. Yes.

Q. Do you remember the striking work in the beginning of April?

A. Yes.

Q. What day was that?

A. The third.

Q. What day of the week?

A. Monday.

Q. Did you strike work with the rest?

A. I did.

Q. What was it that operated on your mind, to induce you to leave your work?

A. It was those Addresses that I saw put upon Mr Reid's house.

Q. In what way did the Address operate on your mind, to induce you to stop work?

A. It threatened us, that it would be dangerous for us to work.

Q. And was it that threat that induced you to leave your work?

A. Yes.

Cross-examined by the Lord-Advocate.

Q. When did you see this Address on Reid's house?

A. On Sunday.

Q. At what time of day?

A. About nine o'clock in the morning.

Q. Did you see any other Address there that day?

A. No.

Q. Did you see it next day?

A. Any other?

Q. Ay.

A. Yes; I think I saw one in one of the spinners' hands.

Q. Where?

A. In the mill.

Q. You went to work on Monday morning?

A. We went to the mill; but we never wrought in; at least I never wrought in.

Q. Were you in the church on Sunday?

A. I do not recollect.

Q. Do you remember how you were employed on Sunday at all?

A. I was employed in the house during morning church.

Q. Did any thing particular occur on Sunday?

A. I saw nothing, but the people looking at the Addresses.

Q. What people were those?

A. The people about the place.

Q. And the town was otherwise all quiet, was it?

A. Yes.

JAMES BRYSSON—*sworn.*

Examined by Mr Grant.

Q. I believe you are a grocer in Duntochar—are you not?

A. No, in Faifley.

Q. Do you supply the work people about there with the articles that they require?

A. Yes.

Q. You remember, I suppose, the period at which they gave up working in the mills.

A. I do not remember the day of the month; but I know that there was such a thing.

Q. It was in April, was it not?

A. Yes; I believe it was the first or second of April.

Q. Were you in the use of giving them credit for the goods that they took?

A. Yes, I was.

Q. Does it consist with your knowledge, that they were paid monthly?

A. Yes.

Q. About this time did you make any alteration in the mode in which you supplied them with their goods?

A. Yes, I did.

Q. Will you state what that was?

A. I refused credit in a general measure.

Q. This was at the time of the stop?

A. Yes; at the time of the stop.

Lord President.—You acted very wisely and prudently

there; and I advise you always to do the same—to refuse credit to idle people who will not work.

Cross-examined by the Lord Advocate.

Q. You live at Faifley, I think you said?

A. Yes.

Q. How far is that from Glenhead?

A. About a quarter of a mile.

Q. Do you remember what day this striking work began—the day of the week?

A. It was upon a Monday, I think.

Q. And when did you adopt this general resolution, not to give credit?

A. It was upon the Monday.

Q. You did not sell things upon the Sunday?

A. No.

Q. What time of the day do you open shop generally?

A. Seven o'clock, for a common thing.

Q. Do you recollect any applications for credit, that Monday morning before eight o'clock?

A. I could not well; but the general understanding was on the Sabbath day, that they were to stop on Monday morning.

Mr Grant.—Did you open your shop on the Monday morning, as usual?

A. No, I did not. There were two doors and two windows in my shop, and they remained shut for three days.

Lord Pitmilly.—Are there any other grocers in this village?

A. Yes, there are more grocers; but none particularly connected with the Faifley mills.

WILLIAM BUCHANAN—*sworn.*

Examined by Mr Grant.

Q. What is your profession?

A. I am a clerk in Duntochar mill.

Q. You remember the stopping of work in those mills.

A. Yes.

Q. You know the prisoner at the bar, Robert Munroe?

A. Yes.

Q. And you know his brother?

A. Yes.

Q. Did you see them at the time of the stopping of the work?

A. I saw them upon the Monday.

Q. Do you mean the Monday that the work was stopped?

A. Yes.

Q. Had you any conversation with the prisoner at the bar, Robert Munroe, upon the subject of this stopping work?

A. I had some little.

Q. What was it.

A. I was wishing him to come into his work again.

Q. State what passed.

A. He said that he was threatened if he came into his work.

Q. What time of the day was this?

A. It would be about twelve o'clock.

WILLIAM TAIT—*called.*

Lord President.—Is this all to the same purpose?

Mr Grant.—This is as to character, and there is a reason for the delay; for all the witnesses, as to character of the different prisoners, are put together. I do not think it important.

Lord President.—The prisoner has got a good character already, from the witnesses for the Crown; and this is a case where, of all others, character goes the least way.

Mr Grant.—Yes, my Lord, except as to peaceable conduct.

Mr Grant.—May it please your Lordship—Gentlemen of the Jury—I have no intention of attempting to conceal from you, that when I entered this Court yesterday morning, I took my seat at this table with very great anxiety. I do not know that I have ever felt a greater degree of anxiety; but I should think very ill of myself if I could permit, upon an occasion of such vast importance as this, any feelings whatever which regard me personally to come across me. My anxiety, therefore, did not arise from the ordinary agitation with which persons, however much they may be accustomed to deliver themselves in publick, cannot fail to be affected, when they have to address any large assembly upon a very momentous question. Every feeling of that nature gave way at once to that much more natural and much deeper feeling of anxiety, lest I should, through any failure on my part, cause these unfortunate men, who are now trying before you, to suffer that penalty which, perhaps, the exertion of greater abilities and greater experience might have saved them from. When I consider the situation in which they stand, however this case may have turned out, and whatever confidence I honestly and conscientiously state to you I have in the nature of the case, yet I cannot altogether divest myself of that anxiety; and I mention it to you, not for the sake of any favour to myself, but that all the way through what I shall have the honour of addressing to you, you may be pleased to recollect, that I am under the influence of a degree of agitated feeling, extremely likely to impede the free exercise of those faculties I possess, which it is so necessary should be exercised without impediment, in stating the case of these unfortunate men. I have said the case of these unfortunate *men*, because, though, in point of fact, we are only trying one of these men, you must be aware that the Crown has taken full advantage of that course, which the particular nature of this accusation permits it to take, in going at large into the whole of the history of every one of these prisoners, and into the history of a multitude of transactions, introducing the names of a great number of people, who are not here either to contradict what is said, or upon their trial, and

with whom, in point of fact, it is not proved that these men at your bar are in any way connected.

Gentlemen, let me therefore entreat of you to recollect, that the case you are trying is that of this young man, Robert Munroe. You are not trying the case of any of the other prisoners, far less are you investigating any thing that any other person may have done, any thing that any other person may have designed or contemplated; unless you shall be satisfied, under the solemn sanction under which you are to try this cause, that this unfortunate young man is connected with those designs.

We have been led, (and I have before said that the course was open to the Crown to pursue, from the nature of the charge brought against these men,) we have been led into a course of investigation as wide, into a discussion of particulars as far removed from any thing with which the prisoners are connected, as, I will be bound to say, in any case that ever was tried by an officer of the Crown, was ever brought forward. I impute to my right honourable and learned Friend, and I am happy on all occasions to state him by that appellation, most sincerely I impute to him nothing but what is perfectly fair; I impute to him nothing but what is perfectly candid; I impute to him nothing but what is perfectly just in the administration of that high and important office which he fills, and in the pursuing of this most fearful investigation. But I think my right honourable Friend has been misled. I think the information he has received has not been accurate. I think if it had, my right honourable and learned Friend would have abstained from a great deal of evidence which has been introduced here, knowing, as he cannot fail to know, how liable all men are, even the most practised in the details of business, the greatest lawyers, and those who have sat the longest even upon the Bench, in conducting legal investigations,—how apt they are, in spite of themselves, to mix up in their consideration things that have been given in evidence, although they are not evidence against the person whose case is to be tried. Your situation, Gentlemen, must be, from your habits of life, much more difficult. You

are not accustomed to these legal investigations. You know, because it is a doctrine of common sense—you know, because probably all of you, certainly most of you, I dare say all of you, have been engaged as Jurymen on criminal trials, or witnesses on criminal trials, conducted in this country—and you will be informed by my Lord,—that whatever is evidence against this man, must be brought home to himself; that evidence of what other persons did or said, or general evidence of that nature, is not enough to convict him; but that you must carefully and accurately separate it in your consideration from what is brought home to *him*. It must be all thrown out of your consideration, wiped out of your memories and recollections, as if no witness had been examined to that whatever. Now, I know from my own feelings in this case,—small, upon the whole, when you come to look at it as this case is,—I know this is a matter of extreme difficulty; that it requires much consideration, and a great deal of application of the mind. To you, Gentlemen, who are not accustomed to these investigations, it must be more difficult; but it is yet more essential that you should perform that operation.

Gentlemen, I am perfectly sure that I need not press upon you the importance of entirely casting from your recollection every thing you have heard before you entered that box. You know the principles of British justice too well, to require to be told, that you are to try this man according to the evidence laid before you. He is entitled to be supposed entirely innocent, except so far as that evidence convicts him. You are not entitled to know even that there were any of those designs, which have been imputed to a number of unknown persons, and which the Crown has endeavoured to impute to this man; except so far as not only the existence of them has been proved before you in this case, but as they have been connected with the prisoner at the Bar.

Gentlemen, it is impossible, however, for any person, almost upon any occasion, to address himself to a question of this nature, without adverting to the circumstances that have taken place unfortunately in this country. I am sure there is no man has occasion more deeply to lament them, than those who take the greatest interest in the happiness and wel-

fare of persons in the situation in life of the prisoner. It is said, Gentlemen, that this was a conspiracy to overturn the Government. I do not talk of the conspiracy that you have heard of here,—whatever was done in these shops—I talk of that conspiracy, of which this Address, of which you have heard, was one of the fruits. I talk of those designs, of which we all know. I talk of those doctrines, not only the most extravagant, but the most malevolent, which have been held out to unfortunate men, ignorant upon these subjects,—which have been held out to them, while smarting under a degree of suffering, which, I believe, in my conscience, was hardly ever sustained before, either in this country or in any other.

Those doctrines we have been told tended to a subversion of the Constitution and the Government. I know not what their intention might be, but I know that the only practical effect that they were likely to have, was to subvert the happiness, to ruin the peace, to destroy the morals of that class of the community to whom they were addressed. I think the Constitution of the government of this country stands upon too firm a basis, too broad, too wide, too deeply founded in the hearts and in the affections, and still more in the judgment of the great majority of the people, to be shaken by any attempts of this nature. The Government and Constitution of this country are not to be overturned by revolts and conspiracies at Duntochar, at Glasgow, or at Manchester. These bear but a very small proportion to the population of Great Britain; they bear but a very small proportion to the wealth of Great Britain; they bear, thank God, a still less proportion in that scale of influence, which alone can ever succeed in overturning the Government of a great country. Their projects, therefore, were as idle as they were malicious; and no man, of any sense or judgment, concerned in them, could have proposed to himself any object, but that frightful one of creating a sedition among the lower class of the people, which could end in nothing but their own misery.

Gentlemen, I trust enough has already been done to convince those deluded people of the personal danger, as well as the great political danger, of those abominable, and equally ridiculous doctrines, which have been circulated among them.

I believe, in my conscience, enough has been done. And, if you permit yourselves to look for a moment, which it is almost impossible for you to prevent yourselves from doing, to the consequences of your verdict, you may rest assured that your verdict is not necessary against this man, in order to do that which publick justice, as well as publick expediency, requires. Enough has been done. And I trust it will be as many years and more before we shall have occasion, in Scotland, for the unusual parade of a Commission like this—more than as many years as have elapsed, since the last time an assembly of this sort was held for such a trial.

But, Gentlemen, the crime of Treason, in its very name, imports a crime of the deepest consequences to the state. You have been told, and told well, that it is not every insurrection; that it is not every thing that is attended with local danger; that it is not every thing that may amount to a very high crime, which will constitute the crime of Treason. As I go along I shall have occasion to remark, following one of the most venerated sages of the law, my Lord Hale, that even many of those crimes which are now established in the class of constructive Treasons, are hardly reconcileable to the general view of the nature of the crime of Treason. Conspiracies which have been mentioned, for the pulling down all enclosures; wars levied for that purpose, or risings for that purpose; risings to pull down all meeting-houses; risings to pull down all brothels;—these are held to be High Treason. I agree with Lord Hale, that, although it may be too late to lay down, that these shall not be considered constructive levyings of war, yet, if the question were open to us, and we were again to interpret that act of Edward III., I believe there are very few judges, and very few lawyers, who would hold, that those offences were within the natural scope and meaning of the crime of Treason. But, Gentlemen, this is perfectly clear: We ought to go no further in this course. Where we have precedents established by a long course of decisions, which have come by the tacit assent, at least, of the legislature, and by the general assent of the judges of the land, in different ages of our history—where we have such precedents to establish a particular definition of a crime, I am the last person

that would wish those precedents to be departed from; because every departure of this sort is of the worst consequences, in so far as it throws matters into uncertainty. All I say is, that where we have no precedent to lead us, we should look to the true principles of the law; and where we think that precedents, which we are bound to follow and acknowledge, have gone rather too far in one course, we should go no further than they compel us to go; but we should look back to those older precedents, and those principles by which we think the case before us ought to be governed.

Gentlemen, this is not the only case in which it is necessary for a Counsel, addressing the Jury, to speak to them upon what may be termed a point of law; because, what is frequently termed a point of law, is, in point of fact, nothing more than the explaining a statute, or a part of the common law, in order to the applying it to the facts that have come out in evidence. And, as it is the Jury who are bound, upon their oaths, to say, whether a person is guilty, or not guilty, of that crime which is imputed to him, and which is described in the statute, or by the common law, it results, as matter of necessity, that the Jury must interpret the meaning of the words of the law. The books are full of such cases; and one that strikes me instantly is, one which in England was the subject of discussion—in Scotland it has never been so—the question of law in matters of libel. And in the very case of murder too, it is a question of reasoning, and is made a question of legal decision,—what is, and what is not murder? But was there ever a Juryman, that, if he thought there was not a felonious intention accompanying the crime, whatever a Judge or lawyer might tell him, would convict a man of this capital offence—if taking into consideration the reasoning on all sides; taking into consideration, with some degree of jealousy, the reasoning of the counsel for the prisoner; if taking into his serious contemplation, as he should answer to his country and his God, those reasonings; he did not in his own mind believe that the guilt was made out, such as the law meant to describe it? Gentlemen, this is not possible. In a case of Treason, it is still more impossible, because the point you are to try, is the merest and plainest question of *fact*.

The crime consists, and is described by the law to consist, in the intention of the mind. What shall prove the intention of the mind, in the nature of things, cannot be a question of mere law. It is not possible. It must always be a question which the Jury is to decide upon, and the Jury alone. It is a question on which the Court will enlighten the minds of the Jury, as they do on every other occasion. It is a question upon which the Court will enlighten the minds of the Jury with considerable authority, not only from the deference due to the Court itself, but from laying before the Jury what have been the cool opinions of wise men in their closets. But really when we come to talk of Treason, there is no difficulty in the world on this matter; and whether it is a question of fact, or of law, what shall, or shall not be, an overt act of Treason, it can hardly ever be very useful to discuss. It is said, a contriving *to depose the King* is an overt act of imagining *to put him to death*. It is said, it will be so laid down from the Bench—my learned Friends say you are to take the doctrine from the Bench—it is not worth disputing, but in principle I dispute it—for it is a presumption of *fact*. No man can believe, no man can be heard to say, that if another attempts to depose the King, he does not mean to put his life into that sort of danger which infers the compassing his death.

Gentlemen, it is not necessary, in order to prove that a man has compassed the death of the King, to prove that he had undertaken to do that which could not be done without the King's death following; if he did that which, in a most probable event, would be attended with such danger to the King, that it was very likely he might be put to death. No man of common sense ever said this was not, to all intents and purposes, a compassing the death of the King. And any man who puts the King under personal and bodily restraint, any man who imprisons him by force—he may say he did not intend to put him to death, or in a situation of being likely to be put to death—but no man can believe him. So that, whether it is a question of law, or a question of fact for the Jury, is a matter more of principle than practice; for, all the cases in which it is laid down, that certain things

are overt acts of compassing the King's death, are cases in which every man must admit the thing could not be projected without compassing to put the King to death.

Gentlemen, in my argument, and in the case you are about to try, this view of the subject is of some importance. I shall establish to you very satisfactorily, that I have no sort of merit in stating this to you, because it is a view of the subject which, from the very earliest period of the history of the law, has been, without one exception, entertained down to the present time. I might state one exception, of rather a hasty address, which, several years ago, was made to a Grand Jury, and caused great sensation at the time. It is not necessary to allude to it, and, upon the whole, I cannot say it was an exception, when it is more closely investigated. But it is laid down in all the books—it is laid down in the act of Parliament itself, that the overt act is to be given *in evidence of a Treason*, and charged in the indictment as *proof of a Treason*. And, when once it is said it is *proof* of a Treason, it is quite clear that the *Treason* is the thing *to be proved;* and *the Jury* are to apply their minds *to that proof, and be satisfied that the Treason is made out.* I shall afterwards have occasion to state this more distinctly, from the books, where it is laid down precisely in these terms. Gentlemen, I will afterwards take the liberty of detaining you for a short time, in going a little more nearly into those questions as to the law of Treason, as it applies to your part in the trial of this cause; because, however slight I think the case in point of evidence, it is my duty. And I am sure, not only that you will excuse me, at the expence of your time, for a discharge of that duty; but, that you would not excuse me, if any consideration could induce me to abstain from discharging it in every part.

Now, Gentlemen, if you look to the abstract of the indictment, which you have heard already read, there are four counts in it; that is to say, there are four different species of this crime of Treason charged against the prisoner at the bar; and of one or other of those different species of Treason, which you may regard, if you please, as different crimes, you are to find him guilty, or not guilty. The *means of*

proof offered to you of those different sorts of Treason, are the *overt acts* which are stated in the indictment: Of these, there are nineteen under the first count. The second count has no overt acts stated, it being in itself the act. There are the same nineteen proofs stated under the third count. And the same nineteen proofs are again stated under the fourth count.

The first count, or charge, is that of *compassing or imagining the death of the King*. My learned Friend, the Solicitor-General, in his address to you, gave up, if I understand him right, this part of the charge, as he did also the second count, that of actually *levying war against the King*; and he confined your attention to the third and fourth counts —the third count being *the compassing, imagining, inventing, devising, and intending to deprive and depose our Sovereign Lord the King of and from the style or kingly name of the imperial crown of this realm*; and the fourth, *the compassing to levy war against the King, in order to compel him to change his measures and counsels.*

Now, Gentlemen, it is necessary, in my view of the subject, that I should state to you, notwithstanding the learned Counsel has given up the first count, what the law and the practice is under the first count, that of *compassing and imagining the King's death*; because I shall afterwards shew to you, that the third and fourth counts are only to be understood of facts applicable to those acts *which would have been overt acts, to prove the first charge of compassing the death of the King.* So that if we get at this, *what is the law and the practice with regard to the overt acts, which are sufficient to prove a compassing of the King's death*; which compassing, you will observe, is the Treason, and not the act that is performed; if we get at this, *what is a sufficient overt act to go to you as evidence of a compassing of the King's death*, we shall then arrive at *what is a sufficient overt act under the third and fourth counts.*

Gentlemen, the words of the statute of Edward the Third are these: "Whereas divers opinions have been before this time in what case Treason shall be said, and in what not, the King, at the request of the Lords and the Commons, hath

made the declaration following." And the first thing to which I would call your attention, is *the object with which this statute was made.* It sets forth, that it proceeded upon a petition from the Parliament to the King, that this matter of Treason should be cleared up, and then the act was made. And it sets forth, "Whereas divers opinions have been before this time;" so that it means to describe, accurately and distintly, what the offences are which are to be held to be Treasons from that time; "that is to say, when a man doth compass or imagine the death of our Lord the King, or of our Lady his Queen, or their eldest son and heir; or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir; and if a man do levy war against our said Lord the King in his realm, or be adherent to the enemies of our Lord the King in his realm, giving to them aid or comfort in the realm or elsewhere, and thereof be provably attainted of open deed by the people of their condition." Then it goes to the counterfeiting the great or privy seal, or his money, with which we have nothing to do. And of this clause, which I have read to you, the two parts, that which relates to the compassing the King's death, and that which relates to levying war, is all you have any concern with. The words are, "when a man doth compass or imagine the death of our Lord the King, or if a man do levy war against our said Lord the King in his realm;" and then applicable to both heads, "and thereof be provably attainted of open deed by the people of their condition."

Now, every law book upon the subject is full of commendations of this statute. From the time of Lord Coke downwards, all lawyers have been agreed, that, next to Magna Charta, it is the statute on which rest the liberties of Englishmen. By the act of Queen Anne, the benefits of this act were extended to Scotland; and we may look upon it, that according as this act is more strictly or laxly interpreted, the liberties of the people of this country, and the security of the Crown, which is inseparable from the protection of the liberties of the people, are better or worse maintained. In bad times, in times of turbulence, when parties wish to extend the

power of the King or the people; for it is no matter which, when they have succeeded; the first attempt made in courts of law has been to give a lax construction to this act, and the Parliament has been, from time to time, obliged to bring the law back to this statute. And when such construction has been introduced, the Parliament has always, sooner or later, interfered, to bring back the law to this statute.

It so happens, that one of the most striking examples of the violation of this law, and its lax interpretation, is a case that took place at the instance of the popular party, in the reign of Charles the First—I allude to the trial of Lord Strafford. A Parliament, entitled to every commendation, except by this one act, was betrayed, by the violence of faction, to attaint that unhappy man. Even in those times, the House of Lords could not be prevailed on to convict him; and upon the House of Lords not yielding to this, the Commons gave up their prosecution, and passed a bill of attainder. The House of Lords were obliged to give their assent, and the unfortunate King too; and almost the first act after the Restoration was to annul those proceedings, and declare them contrary to law.

Now, you will think it a little odd, if the first overt act in this indictment, which you, in this remote corner of the country, are to try, should be couched in the same terms as the indictment against Lord Strafford—the first overt act of conspiring the death of the King. The charge against Lord Strafford was, *an attempt to overturn the fundamental laws.* The charge here is, "the compassing and imagining to *subvert and destroy the Government and Constitution of this realm as by law established.*" Both the one and the other are too loose, and that is the objection to them; they are too loose accusations of Treason. It is not sufficiently clear what is meant; a man is not sufficiently put upon his defence, when he is told that he has conspired to overturn fundamental laws, or that he has conspired to subvert the Constitution. The Constitution of Great Britain is a thing much talked of, but accurately defined by nobody. It is that which, from the earliest times of our ancestors, has been undergoing perpetual change. It is that of which the very excellence is, that it is capable of change without subversion. And, there-

fore, when we are told that a person has conspired to subvert the Constitution, there is no man living, be he lawyer or not lawyer, who can possibly say what may or may not be evidence of such intention. Therefore, Gentlemen, this is one of the things you must throw out of your consideration.

Then you have *a conspiracy to levy war, and to subvert the Constitution.* We have as little to do with that, because *conspiring to levy war* is only stated as a *means of subverting the Constitution.* Then we have, *publishing and posting up a treasonable Address to the Inhabitants of Great Britain and Ireland, to incite the soldiers of the King and other subjects to rebellion.* I mention this to you, that I may clear away from this great mass all that is rubbish—You have no evidence that these people posted up the Address. And then there are two other overt acts *of publishing and posting up printed Addresses to the Inhabitants of Great Britain and Ireland, and composing, and printing such addresses.* Then *of assembling together, and, whilst so assembled, making speeches*—You have no evidence of all that. Then you have *the assembling, and parading with arms, and attacking the houses of divers subjects, and, taking therefrom arms and ammunition*—You have no evidence of all that. *The manufacturing arms with a similar intent.* Now that, I presume, is the clause upon which, under whichever of these counts it is chosen to be introduced, the prosecutor relies. For *training and drilling*, you have nothing of that. For *levying war*; for *endeavouring to seduce the troops of the King*, for *detaining and imprisoning divers subjects*, for *forcing divers subjects to discharge and turn off their workmen*—You have nothing of that. Then you have for *striking work, and compelling and advising others to do the same*—that I shall address myself to afterwards. For *sending persons to England to incite the liege subjects of the King there to acts of Treason*; for *subscribing money for the purpose of procuring arms*; for *exhorting and persuading certain of the liege subjects of the King to procure arms to be employed in rebellion*; for *giving notice of meetings to be held for the purpose of consulting as to the means of raising war.* Now, it must surprise you, Gentlemen, that it has been thought necessary

to introduce all these statements of things that were to be proved against this man at the bar, if it is quite clear that it never entered the heads of the gentlemen on the opposite side, or those who advised them, that there was a twentieth part of them capable of being proved against him. I know it will be said, it is the common and ordinary mode of framing an indictment for Treason. I know it is a very common and ordinary mode of framing an indictment for Treason; but I am sure it is "a custom more honoured in the breach than the observance;" for if any thing is the use of the law which compels them to state the overt acts in the indictment—if there is any common sense in it,—it is to put the prisoner upon his guard as to those matters which will be brought out in evidence against him. And I do think that it is dealing hardly with the prisoner, if, as in this case, indictments are framed and printed applicable to all sorts of Treasons that can arise in any part of the country, and then a copy of this is given to any man who happens to be accused in any part of any Treason. It is not fulfilling the purpose of the law; and if it has been pursued a hundred or a thousand years, I say it is a bad practice, and I say it is an unfair practice.

Now, Gentlemen, having discharged the whole of this rubbish, you come to this. You have a count for *compassing and imagining the death of the King*, and you have, in fact, evidence, such as it is, given of *providing arms in order to attack the soldiers of the King, and to make war against the King; of manufacturing arms with a similar intent;* and, I had almost forgot the most material of any, the *striking work, and compelling and persuading others to do the same.* These are the three overt acts which are charged against this prisoner at the bar. It is not surprising that I had forgot the last; because I imagine it is the first time a charge of *striking work* has been introduced under a charge of *compassing the King's death.* It does not obviously appear, how a man's *striking work* must be evidence of his *compassing the death of the King.*

Gentlemen, I do not think it necessary to detain you any further upon this first count, than just to say, that the Trea-

son charged is a compassing and imagining in the heart of this individual man who stands at your bar,—that this poor man here did compass and imagine—to put his sacred Majesty to a natural death. That is the charge, and you are to be satisfied upon the first count, that that charge is made out. And I will trouble you with no further arguments on that question, though I thought it necessary to state these things in general. But I will come to the levying war, though not as a substantive charge against him, for that is abandoned.

Nothing is levying war but the actual appearing in arms. Now, when I say appearing in arms, I do not mean to say that it is necessary every man should have a musket, or that it should be a regular array like an army—It is an array of one sort or other—It is the assembling with force and violence, with such weapons as they can get—clubs or staves, or whatever they have, to attempt a publick object. Now, the *conspiring* to do this is no Treason at all; and therefore, we have nothing to do with the levying war itself, as a substantive charge, but we have thus much to do with it, as it is the proof and evidence of the first count of Treason, the *compassing and imagining the death of the King.*

Now, I before stated to you, that what compels me to call your attention to this subject is this, that the act of the 36th of the King, renders those offences High Treason which before were *overt acts* of the High Treason of *compassing the King's death;* and therefore, if we want an explanation of what acts the 36th of the King applies to, we must inquire what acts would have been *such a levying of war* as to make an *overt act* of the first Treason charged here, *compassing the death of the King.* I know very well that this is a question which requires more clearness of statement. I will state it over again: I will shew you Lord Ellenborough's opinion; and indeed it results from the words of the act, that the 36th of the King *does not create any new Treason,* that it does nothing but *render those acts which were overt acts of compassing the King's death, substantive Treasons.* Now, if this be true, as it is, you will observe that this act of the 36th of the King, being but a late statute, and only made perpetual in the 57th of the King, has received very

few adjudications; and to throw light on what it applies to, we must go back to the older dicta, and the older writers, to determine what acts would make an overt act of *compassing the King's death.*

The terms of the 36th of the King are these; and it is not of small importance to read the preamble of the act, because it shews the design with which the act was passed, and which was no other than to protect the King's person. "We, your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal, and Commons of Great Britain, in this present Parliament assembled, duly considering the daring outrages offered to your Majesty's most sacred person, in your passage to and from your Parliament at the opening of this present session;" that alludes to what had recently passed, and you recollect to have heard of his Majesty being attacked in his way to the House of Parliament;—"and also the continued attempts of wicked and evil-disposed persons to disturb the tranquillity of this your Majesty's kingdom," and so on. "We, therefore, calling to mind the good and wholesome provisions which have at different times been made by the wisdom of Parliament for the averting such dangers, and more especially for the security and preservation of the persons of the Sovereigns of these realms, do most humbly beseech your Majesty that it may be enacted." Now, Gentlemen, I ought to tell you, that in the reigns of Elizabeth, and Charles the Second, and some other reigns in the English history, similar acts were passed, which rendered ATTEMPTS *to levy war against the King* substantive Treasons; the law being, that nothing before was Treason but *the compassing the King's death*, and *the* ACTUAL *levying war.* That of CONSPIRING *to levy war* was made Treason under Queen Elizabeth, whose title was disputed; and under Charles the Second and others. Then to secure the person of George the Third, this act passed, and it states the object of it—the security of the King's person. Then it enacts, "That if any person or persons whatsoever, after the day of the passing of this act, during the natural life of our most gracious Sovereign Lord the King, (whom Almighty God preserve and bless with a long and prosperous reign,) and until the end of the next

session of Parliament after a demise of the Crown, shall, within the realm or without, *compass, imagine, devise, or intend death or destruction, or any bodily harm, tending to death or destruction, maiming or wounding, imprisonment or restraint of the person of the same our Sovereign Lord the King*, his heirs and successors." That is the first part of the act. A great part of this, you observe, was Treason before. Now, Gentlemen, comes the part which forms the counts of the present indictment here—" or *to depose him or them from the style, honour, or kingly name of the imperial crown of this realm*, or of any other of his Majesty's dominions or countries, or *to levy war against his Majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels.*" So that here are two Treasons—in one sense new Treasons, as Lord Ellenborough says; though not properly new Treasons, but declaring those which were *overt acts of old Treasons* to be *new Treasons in themselves.* There are two acts of this description; the first is a conspiracy to *depose the King* from the honour of his royal crown, which was an overt act of Treason before in compassing his death; the second is to *compass to levy war, to compel the King*,—not all sorts of war,—but to levy war *to compel the King to change his measures or counsels.* And the act proceeds, " or *to levy war in order to put any force, or constraint, or to intimidate, or overawe both Houses, or either House of Parliament*," and so on. Now this, as to the two Houses of Parliament, is not charged in this indictment; and with that, therefore, we have nothing to do. So that, if the war, such as it is, that was levied in this county, was directed merely to the putting a force upon either House of Parliament, it would not come within this indictment. What you have to try, is whether this war was levied, or proposed to be levied, *by force or constraint, to compel the King to change his measures or counsels.*

Now, Gentlemen, in the trial of Watson before my Lord Ellenborough, and the other Judges of the Court of King's Bench, my Lord Ellenborough in his charge having stated the 25th Edward III., states to the Jury, " There has been

statute lately passed,"—to this I beg your serious
"There has been another statute lately passed,
36th of the present King, not so much enact-
reasons, as declaring those things to be sub-
reasons which had been by various constructions
ne to time made upon the statute of the 25th Edward
, deemed the strongest and most pregnant overt acts of
ne several Treasons specified in that statute;"—then he goes on—"The two charges on the 25th Edward III. are the compassing and imagining the death of the King, and the levying war against the King, which has been to so great an extent made the subject of comment before you. The charge of compassing and imagining the death of the King, though properly enough included with the rest upon this record, will not be that to which your attention need be so particularly directed. There certainly does not appear to have been in this case any immediate compassing and imagining of the personal and natural death and destruction of the King; but still under that charge, any thing aimed at the destruction of the regal government of the realm, by which his Majesty's person may be, by just intendment, endangered; such as the deposal of the King from his royal state and dignity; the imprisonment of his person, and other circumstances attempted to be accomplished by open violence, by which the sovereign authority and rule of the King, as established by law, is sought to be overturned, have been so far deemed to be immediately aimed at the personal safety of the Monarch, as to warrant their being considered as pregnant and conclusive evidence of a purpose to destroy the King, upon the ground of that general experience, which has shewn, in all ages, that the graves of monarchs are very near the place and period of their imprisonment, and closely consequent on their deposal from the Crown." Then he goes on—"But on this particular head of Treason, the compassing and imagining the King's death, I do not think that the facts of this case require that I should dilate or discuss the subject more at large than I have already done. A count on this head of Treason was not improperly inserted in this indictment; and the facts charged, as far as they are evidence of an intention

to depose, are evidence also of compassing and imagining the death of the King." In another part of his charge he says, "These four charges are competently framed"—(The third charge is the conspiring to levy war in the language of the indictment here)—"These four charges are competently framed upon the language of the statutes of 25th Edward III. and 36th George III., which latter statute is not directly introductory of any new law on the subject of Treason, except inasmuch as it makes, in certain instances, that which was before evidence, in the way of overt acts, of the crime of Treason, under the 25th Edward III., in future substantive Treasons of themselves, under the statute of the 36th George III. Except inasmuch—" Now, Gentlemen, I beg your attention to these words—the attention of the Court I know I need not—because I am sure their Lordships have attended to it before;—but I beg your attention to these words: "Except inasmuch *as it makes*, in certain instances, *that which was before evidence in the way of overt acts of the crime of Treason, under the 25th Edward III., in future substantive Treasons of themselves, under the statute of the 36th George III.*" So that if I shew to you, that if this war even was conspired, the conspiring of this war, according to all the authorities, could not have been interpreted an overt act of conspiring the death of the King, under the 25th Edward III., I have my Lord Ellenborough's opinion, nay more, the opinion of all the Judges who assisted him upon that trial, that they are not overt acts of conspiring to levy such a war as that described in the 36th of the King. So that I shall now direct my argument to this, to satisfy you what the grounds are, upon which you would be entitled to convict this man of compassing the King's death, in consequence of any levying of war, or conspiring to levy war, with which he is charged, if the 36th of the King had been out of the question. If you are of opinion, that the acts charged against him are not acts of conspiring to levy that sort of war, the conspiring to levy which would have been High Treason, under the 25th Edward III., you must come to the conclusion, that they are not those acts described in the 36th of the King, namely,

the levying or conspiring to levy a war by force or constraint to compel the King to change his measures or counsels.

You will observe, Gentlemen, that the only question in point of evidence, (for it is all a question of evidence—it is absurd to state it as a question of law, other than as far as evidence is a question of law,) but you will observe, the only question that can arise upon the subject is this, what shall be said to be a war, by force, or constraint, to compel the King to change his measures? That is the sole question. Upon that I have abundance to offer you. I have abundance to shew you that it must be *personal force and constraint*,—a force and constraint *operating on the person of the Monarch*—not a force or constraint *operating on his discretion*—not a force or constraint *operating upon those whose duty it is to advise him*—not a force or constraint which *may operate generally through the country*, and create such a degree of fear and intimidation in men's minds, as shall in that way operate upon the mind of the King, who may think it better and more prudent to yield to the design of those persons who are levying war, than to incur the risks that may occur on the contrary. That is not the force and constraint; but the force and constraint which has for its object personally to influence the King by that force and constraint *operating against his person*, and *thereby putting him in danger*.

Now, Gentlemen, if a man were accused under the statute of Edward III. of having conspired to levy such a war directly against the King's person, as should tend to put the King's person in danger, it would be no excuse for him to say, "the probability of my succeeding in that war was so slight, that it is impossible you can imagine the King could ever have been put in danger by it." That is no defence, because, whatever the probability was, whether the means were likely to tend to the end or not, never can be a question here, except in one way, that in some cases men have so slender means, and the thing is so absurd, you must impute insanity to the man that would attempt to accomplish such an object by such means. Except in that way it never can be a question; because, whether he was likely to succeed or not, if into his breast once entered the abominable design to put

the King's person in danger, he is guilty of this Treason, if he has manifested that design by any thing he has done. So that there is no danger in this doctrine—it never can afford a person the means of acquittal, who ought not to be acquitted —it never can afford a person living in a remote part of the island, who at the extremity of the conspiracy becomes a party to it, when any thing he can do is unlikely to put the King to death, the means of acquittal. There is no question of my interpretation being so used. The question always is, whether he contemplated to put the King to death, or to restrain his person? That is the question. Whether he was likely or not likely to accomplish it, can make no difference.

Gentlemen, you have observed, as my learned Friend has stated to you from Foster's book, and as I will state again from Lord Coke, Lord Hale, and Mr Justice Foster, and several other books, that a levying war against the King is of *two sorts;* it is either *a direct war levelled at his person*, or it is said to be a war against him *by construction of law.* And the two things are perfectly different. A design to levy *a war against him by construction of law* never was, and never can be, *compassing his death.* A conspiracy to levy *war against his person* always was, and always must be, *an overt act of compassing his death.* The thing is perfectly plain, and you will observe to what it goes; for, if it were to be held, that *one sort of constructive levying of war* was to infer an overt act of compassing the King's death, then *all acts of this constructive levying of war* must also be so. And we should have it to be the law, that every set of insurgents, who rise up in a warlike manner, such as is described in the books; all the persons who rise *to pull down inclosures;* all the persons who rise *to pull down Roman Catholick meeting-houses*, which was done in this country; in order *to pull down Presbyterian meeting-houses*, which was done in England; would be guilty of *compassing the King's death*, just as much as by conspiring to levy war *to procure an alteration in the law of the land.* If the conspiring to levy any sort of constructive war can be held to be a conspiring to compass the King's death, then a conspiracy to levy all sorts and species

of constructive war, must be such compassing. Then it would follow, that those instances I have given you, would be a *conspiring to compass the King's death*, which on the face of it were an absurdity.

Now, Gentlemen, it is perfectly clear, and I shall shew you from the books, that it never has been doubted, that a levying war *to alter the existing law of the land;* that a levying war *to alter the form of religion or church government*, which the King is bound by his coronation oath to protect, are only *constructive levyings of war against the King*, and *never were considered as overt acts of compassing his death*. So that a man may *conspire to levy war to alter the religion established by law;* he may *conspire to levy war to alter the statute-book; he may conspire to levy war to alter the Constitution of the Commons House of Parliament;* he may conspire to levy war for any and all of these purposes, and *his conspiracy will be no Treason*, UNLESS THAT WAR BE LEVIED. It will be no Treason under the 25th Edward III., *as an overt act of compassing the King's death*, and it will be no Treason under the 36th George III., *as compassing to levy war against the King*. That I state to you, without the least shadow of a doubt. I state it to you on the authority of all the lawyers that have ever delivered judicial opinions upon the subject, with the exception of one hasty opinion, which is contrary to the authorities of all the writers, and contrary to the Constitution of Great Britain. The Constitution of Great Britain could not exist an hour if it were a Treason for a man to conspire to *overturn the Constitution;* because the Constitution itself is a thing constantly subject to change, and no man who takes a part in publick affairs would be safe, if any opinion which he expressed, any design which he entertained, any act which he performed, in furtherance of that design, could be charged against him as an overt act of Treason, upon the ground that it proved a conspiracy *to alter the law or the constitution of the country*.

Now, Gentlemen, it is not true, therefore, that a conspiracy to levy, or that any thing short of the performance of the fact of actually levying, this sort of war that I have told you of, is High Treason. If the war be levied, it is High

Treason. I do not say whether the conspiracy to do it is not a high crime, and may be punished. We have nothing to do with that question, but only whether it is High Treason. And, if I satisfy you on these subjects, as I think I shall, I shall shew you distinctly, that if this case were made out in a stronger manner than it is—*it would not be a case of High Treason.*

My Lord Coke lays down one rule, which I think you will easily see it is of the utmost importance for you to consider. I will state it to you shortly in his words. He is talking of petit Treason in the law of England, but he applies it to both High and Petit Treason. And he says, that "no other case, though of as high or higher nature, shall be adjudged Treason, high or petit, as before it appeareth in the case of parricide;" he says, "the Judges shall not judge *a simili*, or by equity, argument, or inference of any Treason, high or petit, for no like case shall be adjudged Treason; and note this branch extendeth (as hath been said) to the offence, viz. Treason, and not to trial, judgment, or execution." You cannot so interpret this act, says he, that because an offence may be a higher offence of the like kind with the offence described to be Treason, you can call that offence Treason for that reason, unless it is the offence described in this statute; and, therefore, although you should be of opinion with me, that there can he no higher offence committed by any man, than an offence, if you suppose the case possible, which might consist with the preservation of the King's life, the acting with the King to overturn the other branches of the legislature, to establish an arbitrary and despotick government; that is not the offence of High Treason, although the consequences would be more calamitous than the death of any individual, be his rank what it may. The offence of High Treason is the offence described in the statute, and you cannot go out of it.

Now, Gentlemen, Lord Coke says upon the clause of levying war: ("If a man levy war against our Lord the King," and so on.) "A compassing, or conspiring to levy war, is no Treason, for there must be a levying of war *in facto*," that means, under the statute of 25th Edward III. "But if many conspire to levy war, and some of them do levy the

same according to the conspiracy, this is High Treason in all, for in Treason all be principals, and war is levied. If any levy war to expulse strangers, to deliver men out of prisons, to remove counsellors, or against any statute, or to any other end, pretending reformation of their own heads," (that is, publick and general reformation), without warrant, this is levying of war against the King, because they take upon them royal authority which is against the King." He says, "There is a diversity between levying of war, and committing of a great riot or rout, or an unlawful assembly. For example, as if three or four, or more, do rise to burn, or put down an enclosure in Dale, which the Lord of the Manor of Dale hath made there in that particular place; this, or the like, is a riot or rout, or an unlawful assembly, and no Treason. But if they had risen of purpose *to alter religion established within the realm, or laws*, or to go from town to town generally, and to cast down enclosures, this is a levying of war (though there be no great number of the conspirators) within the purview of this statute, because the purpose is publick, and general, and not private or particular." So that he puts all these risings for publick ends upon one footing; *to alter the religion established within the realm*, or *to alter the laws*, upon the same footing with a war, which is for the purpose of *putting down all inclosures.*

Lord Hale, following Lord Coke upon the question, whether a *conspiracy to levy war*,—which, it is admitted on all hands, is of itself no Treason, unless the war be actually levied,—whether a conspiracy to levy war, may be an overt act of Treason within the statute of Edward III., says this; "And yet this difference appears to me to be agreeable to law, and reconciles in some measure both resolutions. An assembly to levy war against the King, either *to depose*, or *restrain*, or *enforce him to any act*, or *to come to his presence to remove his counsellors or ministers*, or *to fight against the King's lieutenant*, or *military commissionate office*, is an overt act, proving *the compassing of the death of the King*; for such a war is directed *against the very person of the King*, and he that designs to fight against the King, cannot but know, at least, it must hazard his life. Such was the case

of the Earl of Essex, and some others," who levied a war for the purpose of going to the presence of Queen Elizabeth, to compel her to change her measures. " But if it be a levying of war against the King, *merely by interpretation and construction of law*, as that of Burton and others, to pull down all enclosures, and that of the apprentices in London, lately to pull down all bawdy-houses, (of which below,) this seems not to be an evidence of an overt act, to prove compassing the King's death, when it is so disclosed upon the proof, or if it be so particularly laid in the indictment, though *prima facie*, if it be so barely laid as a levying war against the King, in the indictment, it is a good overt act to serve an indictment of compassing the King's death, till upon evidence it shall be disclosed to be only to the purpose aforesaid, and so only *an interpretative or constructive levying of war*." Then he says further with regard to levying of war, " A bare conspiracy, or consultation of persons to levy war, and to provide weapons for that purpose, this, though it may in some cases amount to an overt act of compassing the King's death, yet it is not a levying of war within this clause of the statute; but a war levied against the King is of two sorts, first, *expressly and directly*." Now, I beg your attention to this definition of an *express and direct* war; for upon that, this case, as far as the law can be concerned, in my apprehension, depends. " But a war levied against the King, is of two sorts, first, expressly and directly, as raising war against the King, or his generals and forces, or to surprise and injure the King's person, or to imprison him, or to go to his presence to enforce him to remove any of his ministers and counsellors, and the like,"—all of them acts, as you see, *directed against the person of the King*. I may say here in passing, that the levying war, which is first here mentioned, a fighting with his forces, though the King is not present, is a direct levying war against the King; but all the other cases, are cases of force to be applied to the natural person of the King. He proceeds, " Interpretatively, that is the second Treason." Now, I beg you will observe the cases which he classes together as of one sort, " as a war levied *to throw down enclosures generally*, or *to enhance servants' wages*, or *to*

alter religion established by law, and many instances of the like nature, might be given—this hath been resolved to be a war against the King, and Treason within this clause; and the *conspiring to levy such a war* is Treason, *though* NOT TREASON WITHIN THE ACT OF 25TH EDWARD III., yet by divers temporary acts of Parliament, as 13th Elizabeth, during the Queen's life, and 13th Charles II., during that King's life." But he says distinctly, that a war to *alter religion established by law*, in short, to do any thing, be its object never so important, provided it is not levied *against the person of the King*, is no act of Treason, within the 25th of Edward.

I may just read to you this other passage, with regard to interpretative levyings of war, such as the levying an armed force to pull down enclosures, Lord Hale says this: "These resolutions being made and settled, we must acquiesce in them; but in my opinion, if new cases happen for the future, that have not an express resolution in point, nor are expressly within the words of 25th Edward III., though they may seem to have a parity of reason, it is the safest way, and most agreeable to the wisdom of the great act of the 25th of Edward III., first to consult the Parliament, and have their declaration, and *to be very wary in multiplying constructive and interpretative Treasons, for we know not where it will end.*" My Lord Hale, if any man that ever lived was a loyal subject, was one, and a man firmly and devotedly attached to the regal government—a man, the whole inclinations of whose mind went that way. But he was at the same time a most able lawyer, and a most candid man.

Gentlemen, Mr Justice Foster, who is the next great authority upon this subject, and admitted to be as great and constitutional a lawyer as ever lived, (though perhaps, if he had been existing at the time of Lord Hale, he might have differed from him, with regard to political questions then the subject of controversy,) was under the same sort of influence as Lord Hale; from the situation he was in as a Judge; from being a whig, supporting a whig government, at a time when the then King was in very considerable danger from the attempts of the family that had been ousted; and all his prejudices, so far as his mind was liable to prejudice,

were in favour of the detection of Treason, and of the propping and protecting the reigning Monarch against the attempts to depose him. But he agrees with Lord Hale precisely in the doctrine which he lays down. He says,—and this passage was read to you by my learned Friend near me:—"But a bare conspiracy for effecting a rising for the purposes mentioned in the two preceding sections, and in the next, is not an overt act of compassing the King's death." Then let us go to those sections. This is the beginning of section 6th. In section 4th and 5th he speaks of "Insurrections to throw down all enclosures, *to alter the established law*," generally and without restriction, "*to change religion*, to enhance the price of all labour, or to open all prisons," and so on. And then he goes on with other similar cases of levying war, and he mentions the case of Damaree and Purchase. They conspired to pull down meeting-houses. Therefore we have the authority of this great lawyer, that the conspiring to levy war for any purpose not against the person of the King, and, yet stronger, that the levying war to *alter the established law of the land*, that the levying war to *alter the established religion of the land*, are not, and never were, and never will be, *overt acts of compassing the King's death.*

Now, Gentlemen, there is an argument I have heard used in conversation, though I cannot accuse, so far as I recollect, any man who pretended to be a lawyer, of having used it; that an attempt to do that by force, which, if attempted by force, the King is bound by force to resist, must, of necessity, implicate the King's personal safety; as if an attempt is made to levy war, to alter the established religion of the land, which the King is bound to defend. Most surely he is so. Yet this is one of the instances mentioned by all the writers, as if to meet the very question. They state to you, one and all of them, that a conspiring to levy war, which has for its object to alter the religion of the land, as much a part of the Constitution as the mode of electing the House of Commons, *is not a conspiracy to compass the King's death.*

Gentlemen, I shall close what I have to say upon this subject, with a charge of Lord Chief-Justice Holt. I could add charges of Lord Chief-Justice Abbott, Mr. Justice Bayley,

Lord Ellenborough, and others, if it was not taking up too much of your time, in coincidence with it. But Lord Holt, one of the greatest lawyers England ever saw, in Sir John Freind's case, laid down the law as follows. The simplicity of his language, and the justness of his reasoning, are equally interesting. He begins thus: "Look ye, Gentlemen of the Jury, Sir John Freind, the prisoner at the bar, is indicted for High Treason; the Treason that is mentioned in the indictment, is conspiring, compassing, and imagining the death and destruction of the King. To prove the conspiracy and design of the King's death, there are two principal overt acts that are mainly insisted upon—the one is the consulting and agreeing with divers others, to send Mr Charnock into France, to King James, to desire him to persuade the French King to send over forces here to assist them; who were to furnish other forces for the raising of a war within this kingdom, in order to depose the King; and accordingly Mr Charnock was sent upon that design. The other overt act is the prisoner's having a commission from the late King, and preparing and directing men to be levied, and to be ready to be in a regiment, of which Sir John Freind was by that commission to be Colonel. And this was always to assist in the restoration of King James, and in order thereunto in the deposing and expulsion of King William." After detailing the evidence, and stating the objections to it urged by the prisoner, Lord Holt proceeds, "Then there is another thing that he did insist upon, and that is matter of law. The statute of the 25th Edward III. was read, which is the great statute about Treasons, and that does contain divers species of Treason, and declares what shall be Treason. One Treason is the compssing and imagining the death of the King; another is the levying of war. Now, says he, (meaning the prisoner,) there is no war, actually levied; and a bare conspiracy, or design to levy war, does not come within this law against Treason. Now, for that I must tell you, if there be only a conspiracy to levy war, it is not Treason. But, if the design and conspiracy be either to kill the King or to depose him, or imprison him, or put any force or restraint upon him, and the way and method of effecting of these is by levying a war,

there the consultation and the conspiracy to levy a war for that purpose is High Treason, though no war be levied. For such consultation and conspiracy is an overt act, proving the compassing the death of the King, which is the first Treason mentioned in the statute of the 25th of Edward III. For the words of that statute are, " That if any man shall compass or imagine the death of the King." Now, because a man designs the death, deposition, or destruction of the King, and to that design agrees and consults to levy war, that this should not be High Treason, if a war be not actually levied. is a very strange doctrine, and the contrary has always been held to be law."

All this is as clear as the light of the sun; the compassing the death of the King is the Treason; whether by one means or another, is nothing to the purpose. The question is always, did the man compass the death of the King? If the means were the levying of war, it is the same thing as if the means were the providing himself with a dagger. It is not as being *a conspiracy to levy war* that it is an evidence of High Treason; but it is as being *a conspiracy to compass the death of the King, and the levying war the particular means to be used for this purpose.*

Now, says Lord Holt in continuation, " There may be war levied without any design upon the King's person, or endangering of it, which, if actually levied, is High Treason. But a bare designing to levy war, without more, will not be Treason. As, for example, if persons do assemble themselves, and act with force *in opposition to some law, which they think inconvenient, and hope thereby to get it repealed*, this is levying a war and Treason, though *purposing and designing it is not so.* So when they *endeavour in great numbers, with force, to make some reformation of their own heads, without pursuing the methods of the law*, that is a levying of war, and Treason; *but the purposing, and designing it, is not so.*

But if there be, as I told you, a purpose and design *to destroy the King*, and *to depose him from his throne, or to restrain him, or have any power over him*, which is proposed or designed to be effected by war that is to be levied, such a conspiracy and consultation to levy war *for the bringing this*

to pass, is an overt act of High Treason. So that, Gentlemen, as to that objection that he makes in point of law, it is of no force, if there be evidence sufficient to convince you that he did conspire to levy war for such an end."

Now, Gentlemen, as to the sort of force and constraint, which, if designed, is sufficient to infer the compassing the death of the King, there is a good deal to be found in the books which have treated of this subject; and, all the way through, there is this one clear doctrine and position, *that it must be a force and constraint applied* TO THE PERSON OF THE KING. And general words of *compelling the King*, and *forcing the King to do any act*, are not only not sufficient to support an indictment for High Treason in compassing his death, but the having maintained this doctrine, brought one of the Chief-Justices of England to the scaffold. It was in the reign of Richard II., and I will just read to you the question that was put to Tresilian and the rest of the Judges, and their answer, that you may see what strictness of interpretation has, from so remote a period, been held necessary to insure the construction I have stated. The question put by the King to the Judges was this, "What punishment do those deserve, who compelled or forced the King to consent to the making of the said statute of ordination and commission?"—(a statute of ordination and commission which he wished to get rid of, and he thought if he could get this opinion from the Judges, he could do so;) to which question they unanimously replied, "That they ought to be punished as traitors."—The next question was, "How ought they to be punished, who prevented the King from exercising the powers and prerogatives belonging to his crown?" They unanimously replied, "That they ought, as traitors, to be punished." For this, they themselves were afterwards adjudged, by the like arbitrary construction, to be guilty of High Treason.

Now, that they were found guilty of High Treason, certainly was as little within the meaning of the statute of Edward III., as their own interpretation of it; and I do not give you that as an instance of any thing, but the violence of the times. But it is proof this was an unlawful interpretation of the Judges, that the condemnation of those opinions re-

mains upon the statute-book to this hour; and, what is of equal importance to us, in the opinion entertained of them ever since. My Lord Coke, whose opinions are not supposed to have leaned very much against the prerogatives of the Crown, calls them damned and damnable doctrines. Lord Hale extends to them, in milder language, an equal share of reprobation; and they have been reprobated ever since.

Now, under the words of the statute of George III., of intending *to compel the King to change his measures or counsels*, the overt act must be stated in different words from the general words which describe the Treason; for that overt act must infer something more to have been done than merely what might have *compelled*, or have had *a tendency to compel and constrain the King*. The nature of the compulsion designed, must be set forth to have been direct, and such as would have proved a compassing of his death, under the act of Edward III.

Gentlemen, I should fatigue you if I went through more of this argument, and perhaps I have already done so at too great a length. If I have, these questions being new in this country, and not very frequent in the other part of the island, and God forbid they should be more so, must excuse me. And, though these men have been accused on slender grounds of this enormous state offence, yet it was necessary for me, in a case in which their lives are in your hands, to state to you fully and fairly the grounds on which you are to make up the important decision you are to come to; that you may do it with full information on the subject. And I declare to you most solemnly, that, if I were seated where my Lord now sits, to state to you my conception of the law, I should do it in the words I have used. I could not alter one part of what I have stated to you.

Gentlemen, without going further into this question, and leaving it here, with my humble apology for having taken up so much of your time, an apology which I owe equally to the Court, I will proceed very shortly to ask you to accompany me through the evidence of the witnesses again. I entreat you to observe that this unfortunate man Robert Munroe, is the person whose conduct you are to inquire into now.

Robert Munroe, you will be surprised to find, has his name mentioned in the course of the whole voluminous evidence that was laid before you yesterday three times; it is mentioned four times, but one of them is as to the same occasion; it is mentioned by two people, but he appears in these transactions precisely three times; he appears in the forge, where there were a great number of people, where the door was open, where there was a crowd without, and a crowd within, in the middle of the day; where people, if their object was to levy war against the King, and they were making pikes for the purpose, in consequence of some secret conspiracy, must have been seized with lunacy. In the middle of the day, without concealment of any kind, there were persons making pikes. The Solicitor-General said, the making a pike was in itself not a very proper occupation. It may be a proper occupation or an improper occupation, according to the circumstances. It may be an overt act of High Treason. It may be the most innocent thing in the world. The bare making a pike is a matter of perfect indifference. But, be that as it may, whatever was the object of these poor people in making pikes, Robert Munroe had no hand in it. He is said to have been there; he is sworn to by Robert Bullock, who is the only witness who says he was there. I shall take it he was right, and that he did see him. I shall be much obliged to my learned Friend, if I mis-state any evidence, if he will correct me, and I am sure my Lord will, if it occurs to his recollection. It is not in my intention to do so. Bullock says, that he saw Robert Munroe standing in this large place, which he says was longer than this church in which you are assembled, and one of the witnesses said it was considerably longer; and he was asked what he was doing, and he said he was doing nothing, he was taking no part whatever. If any of you have taken notes, and will refer to what you have written, you will find this witness says, that Robert Munroe was not engaged in carrying the iron backwards and forwards. He was asked, whether he did not take something off the floor, and he says he stooped and took up something.—I am committing the same blunder I reproved my learned Friend for before. He says *one of the Munroes* was

there; he does not prove *the prisoner* stooped. But what did he do when he stooped? He picked up something. What was it? He could not tell what it was; but he told you it could not be a pike, because it was two feet from the flattened files. You observed the *effect* attempted in examining the witness. You sometimes see plans introduced, and here is a plan of a pike for the witnesses to refresh their recollection by. Then he was shewn one of these things, and you saw them. They are not things that could have been lying on the floor without people seeing them; so that, whoever took up the thing, it was not a pike.—This is the whole of his history.

Then you have another witness, who says that he saw him in the spade-finishing shop. He was doing nothing there, nothing at all; the door was open, a crowd of people, many of the people spectators, some of them actors. Munroe not an actor; but he was seen there, and seen for a very few minutes,—for when was he seen? He was seen during the time some of the people came in to take the fire, which, in the nature of the thing, they must have carried back; they were not to use it in that place. It was a momentary transaction, and for that moment he was seen at the door, and in the place, doing nothing.

Then you have another witness, who saw them in a place not far off the grinding-mill; and what is he doing there? Nothing; standing perfectly still, and taking no part whatever. But he does this, he stoops and takes up a pike, and he shews it to the witness, and having shewn it to the witness, he puts it down upon the floor again. Now, Gentlemen, I will undertake to say, that, in the experience of all the lawyers at either of the bars of this country, there never was such a case as this. There never, since the world existed, was a case of High Treason, in which the overt act was—what? If they had been, instead of having a pike, which they did not know what they were to do with, consulting how they were to provide daggers to put the King to death, and this man had been in that situation, he would not have been guilty of High Treason. My learned Friend, with that degree of silent satisfaction, which I can attribute to nothing but his commiseration for the prisoners at the bar, and the pleasure which I

am sure he and every body else must feel, that the event is likely, by the result of this trial, to be what every man would wish it for their sakes to be,—my learned Friend shakes his head at my argument. Gentlemen, I have no hesitation in saying, and my Lord said it yesterday, and we all know, that, if a man is merely present at a consultation held for a treasonable purpose, he may be guilty of misprision of Treason, but not of Treason; so that, if these people had been consulting how they could put the King to death, and Munroe had been in that situation in which he is sworn to have been on this occasion, he would not have been guilty of High Treason. If afterwards he came back, or you could prove he knew before what they were conspiring about, it must be inferred he came to lend his assistance; but there is no such thing in this case.

There is a fourth occasion in which he makes his appearance, and that is before Mr Dunn, senior, and Mr Dunn, junior, the two brothers; when Mr Dunn, senior, comes from Glasgow on Tuesday to inquire into the state of the place.

He is seen *sharpening a plane*: That I have intentionally passed over, because it is not worth mentioning to you.—You observe there is a charge against one Munroe, *George Munroe*, who had a pike in his hand sharpening, on the Monday.

But, as to the sharpening on the grinding-stone, there is nothing but the sharpening *a plane* to affect *Robert* at all.—Then you have him at his master's on the Tuesday. He comes there with a man of the name of M'Lean; and you have it upon the evidence of the elder brother, William Dunn, that when he went to the works, he found two or three of the spinners coming out from the works. One of them was Munroe, whom he identifies. He is asked the christian name of the prisoner. He is not quite sure, but he thinks it is Robert. The name of the other he believes was George. He does not recollect the name of any other. He spoke to them, and recommended them to return. They stated that they were afraid of returning. "I recommended to them to return to their work, and to allow their wages to stand over till the regular time of paying them. They said they wanted their wages, that the shops would not give them credit." That was the reason they gave;

and how that reason has been confirmed you have heard. And he says *they did not say they were deputed.* Now, this is of some importance; because, as to all the rest of the conversation,—he says, "something passed; they did not know how soon they might be sent for to join the rest; they did not say by whom; he thinks they said they expected to be sent for from Glasgow." There was,—I shall address myself to that presently,—a dependence attempted to be placed upon the testimony of Mr William Dunn alone; for Alexander Dunn, the other brother, did not hear it, and therefore you have to see how far his memory is so accurate, that you can rely upon it. Now, William Dunn says distinctly, *they did not say they were deputed;* the other Dunn says distinctly, "they came inquiring about their wages, *they said they were deputed.*" Now, here is a difference in a material fact. If they could have made out, on the other side, any thing like a conspiracy for these objects, and then have proved that Munroe came as a deputy from the conspirators, and had said so, it might have been evidence against Munroe; and, therefore, it is a most material fact, and you see how it stands. At the same moment one of the brothers swears they said they were deputies, the other swears they did not. Now, the result of that is, that without imputing to them any thing whatever,—for I believe all the witnesses, without any exception, meant to speak the truth,—there was not one man who was desirous to conceal any thing, but each was evidently afraid that he might say something that might be brought against him afterwards; a caution every witness is entitled to use in giving his evidence,—I believe they all told you all they knew fairly on the subject,—I do not impute any thing to those gentlemen improper,—but the result is, that one of them made a mistake; and therefore you must hold that their recollection is not so perfect as that you can build a great deal upon the testimony of one of them. And that is the only evidence you have of any conversation about Glasgow.

Now, this is the whole case against the prisoner at the bar; not only he does not make his appearance at any other period, but he is not connected by conversation with any of the numerous persons who have been named before you. We have

had attempts to connect these people with a man that has fled, and with a conspiracy and design of I know not whom. They have not connected one of those people with the prisoner. I state it upon your recollection, upon your notes, I state it upon the recollection of every person present, who heard the examination, they have not connected the prisoner by words even, with any man against whom they have given evidence. I believe there never was such a charge of conspiracy attempted. If a man is compassing to put the King to death, he may perform the act by himself, and one unfortunate lunatick was tried for it; but a man cannot conspire by himself, and I believe this is the first trial, it is the first I have ever heard or read of, where the foundation was not laid of a conspiracy.

Now, where is the evidence of a conspiracy? and if there is, where is the evidence that the prisoner is connected with it? They have examined to Faifley mill. Where was he connected with Faifley mill? They take one man to Paisley, and Mr Dunn gave evidence as to Glasgow, which was very crowded, and there were men and women, and strangers and merchants, and every body else walking about the streets. Then he gave evidence, that the people all struck their work. What connection has this man with these things? Is there any man safe if this is evidence against him,—I do not say against this poor man, because the case is so slight, it is almost a waste of your time to argue it further,—but is there any man safe, if the Crown may give evidence of a surmise of a conspiracy existing somewhere, and then give evidence, that a man was seen somewhere, where some of the supposed conspirators were doing something in which he took no part, and where there were fifty others who took no part either? Is this an overt act of High Treason? Gentlemen, I say to you, without the least fear of contradiction even from my learned Friend, who is bound to contradict me in every thing I say, which is not according to law,—and I know his disposition to contradict me if he can, perfectly well,—without fear of contradiction from him,—I say this case must fall to the ground, unless they prove a conspiracy. First, what is the use of all the latitude given to them, if they

cannot make out a conspiracy? Then, what is the proof of a conspiracy? There is proof of a hand-bill stuck up. Cannot that be done without a conspiracy? Who acted upon the hand-bill? Who had any connection with the framers of the hand-bill? My right honourable friend says he does not know; and cannot find out. I wish to God he could. It might be my unfortunate fate to defend the author of it, and I should defend him to the best of my poor abilities; but now, and as an individual, I should be most extremely glad, if he was discovered and brought to justice. I should be extremely glad, if any persons connected with it, any persons assembled together, relative to the composing or sticking it up, were brought to justice; not only for the protection of the state in a general sense, but for the protection of this county, for the protection of unfortunate men in the situation of those at the bar. I wish to God they could be discovered; for in the course of my experience and reading, without meaning to say that either of them is very extensive, I think I never did witness or hear of a more nefarious thing, than the sticking up of that bill all over the country by some persons—scoundrels, as well as traitors,—infamous cowards, as well as cold-blooded villains, who, sunk in their secret recesses, have poured forth this Treason for no purpose but to bring men, smarting under their poverty, with hardly enough to feed themselves and their children, to the situation in which these prisoners stand before you.

Gentlemen, words are not sufficient to express the indignation a man must feel, that persons, capable of such horrible conspiracies, not against the state alone, but conspiracies against the lives of the very people whom they flattered to their destruction, have been suffered to escape. Gentlemen, those are the persons who are the fit objects of publick vengeance; those are the persons that no exercise of human ingenuity, no exertion of human powers, ought to be omitted to bring to condign punishment. The whole country, great and small, would rejoice in their being brought to justice. Who is there that will not turn with an eye of pity; who is there that will not dissolve in tears; if these unfortunate young men, hardly one of them, I believe, much above the age of

twenty, one of them certainly much less,—these unfortunate young men, connected in no way that we can discover with any of these conspiracies or contrivances whatever,—deceived, duped, if the case of the Crown be true;—led under pressures which you, Gentlemen, know, which you have seen under your eyes, into this situation—if they are selected for the vengeance of the greatest Government that ever was reared upon earth—if they should fall the victims, and those that actually conspired this nefarious and abominable project should escape, again to proceed in measures which shall be attended with the same consequences?

But, Gentlemen, thank God, and I am sure you will agree with me in feeling the same heartfelt satisfaction, that I can tell you, on my honour as a man, that I am thoroughly convinced there is here not only no necessity, from the evidence brought before you, of convicting them; but there is not a shadow of proof that can excuse you, if you do so, to your consciences and to your God. Gentlemen, every crime should be proved clearly and distinctly. No crime is to be imputed from suspicion, from what may be considered likely, from what may strike you as probable. It must be proved distinctly and clearly. And, if ever there was a crime which requires this more than another, for the safety of every man in the kingdom, it is this which you are trying. It is well said by Mr Justice Foster, in the passage that has been quoted, there is no man so high, and we have a fearful example that there is no man so low, but this law may reach him.

Gentlemen, in this free country, where it is a part of our Constitution, and a most valuable part of it, that every man shall freely deliver his opinion when and where he likes, not only on the conduct of the Government, but on the propriety of those laws which exist, and those changes in the Constitution which he thinks it necessary to introduce,—and the Constitution could not subsist a year if this were not the case,—how important is it, that he should not be liable to be called in question for this crime, upon any thing but the most direct and distinct evidence! Is there any policy, on the other hand, that can lead to a different conclusion? Can it be requi-

site for the safety of this great Government—a Government which has infinitely more security than any which is wielded by persons whose rule is not founded on the consent of the people and in fixed principles of law,—this great Government, founded, as it is, more broadly, and more firmly, than any Government that ever existed upon the face of the earth; —can it be necessary, for the security of this stupendous and magnificent machine, that persons such as these, for such offences, and upon such evidence,—such offences as are imputed, such evidence as is given against them,—should be sacrificed to this law, intended, as it only was, to secure the Government against attempts, that are really and substantially dangerous to it?

Gentlemen, if there is any thing which is of importance to this country, it is this, that the proof of Treason should be clear and distinct. The safety of all our lives, the safety of all our fortunes, the safety of the Government on one hand, and of the individuals composing the people on the other, depend on that glorious institution, of which you are now performing the functions. You, Gentlemen, selected from the class of society to which you belong, living in this remote corner of this great country, are now performing functions, on the due discharge of which depends the safety of every member of this state. You will judge, without my going much more minutely into the evidence before you, whether any man can be safe, if, upon a charge of this nature brought against him, he may be convicted, though there is no direct proof given of any conspiracy to effect a treasonable purpose; though there is no connection proved between the person accused, and any one man who is supposed at any time to have done any questionable act; but that this poor man was a spectator, among many other spectators, of that, which, by a lax and strained interpretation of the law, and great ingenuity of counsel, might, perhaps, be made out to be something like an overt act of High Treason. If you are satisfied, Gentlemen, that I am wrong in this, you will act accordingly; if you are satisfied I am right, you will act accordingly. You will consider, what is no small matter to any human being, that the life of another human being is in your hands: You

will consider there is much more than that, there is the Constitution of the country in your hands. It is necessary to shew, I do not say this, I am sure it will not be imputed to me, that I say it with any feeling of personal ill-will; on the contrary, as far as the learned officer who fills the situation of Lord Advocate is concerned, I am bound to say, both for myself, and I can assure him for every other person, as far as I know, who has observed his conduct in these trials, that it has been marked by humanity, by candour, and, at the same time, by a due attention to his important and painful duties;—but it is necessary for you, and without reference to this case, or occasion, to shew to the whole country, and to the whole world, that there is no corner of these dominions, however remote—no class of persons, whose situations may be ever so removed from scenes of business, or from the upper walks of life, in which jurymen are to be found, that will not interpose themselves between a British subject, and loose imputations, and still looser evidence, urged to involve him in the enormous crime of High Treason.

Gentlemen, I have omitted two circumstances which I ought to state. I have been rather, perhaps, carried away in this case with those larger views of the subject, which it is almost impossible to divest one's self of in cases of this kind. There is something peculiar in the case of this man. He is not at all connected with the Address that was posted up. He is not proved ever to have seen that Address. As to the Address being stuck up where every body might see it, nobody says *he* saw it, nobody says he repeated the contents of it. The other Address in the mill was given to Stewart, and you have evidence that Stewart said, a man, a perfect stranger to him, came into the mill, and gave him that Address, and went away immediately. What does this prove, Gentlemen? What does it prove, but that shocking system of concealed excitation, upon which the whole of this nefarious plan has been conducted. The Address is printed no man can tell how. My learned Friend would have found out, if possible, who printed that Address. It bears to be printed at Glasgow; but no man at Glasgow printed it, or he would have been found out. I think it impossible,—and if I

thought it possible, I should impute a degree of want of exertion to the magistrates, and persons employed by the Crown, which I do not impute to them,—I think it impossible it could have been so printed there, without being found out. But I know how it is possible it might be printed. I know it is possible, in a very small space, to carry a printing press, and all its apparatus. Nobody knows who composed it. Secret persons are employed to post it up, and betake themselves to flight afterwards. Secret persons deliver it in places like this, and then, in like manner, turn round, without saying a word.

Then, Gentlemen, see what this man did with it when he got it; he says, let us shew it to Mr Dunn. Was that like men who were in a conspiracy, in which this was to be shewn against them? It is taken to the master to shew him. It is not safe to *your works* that we should continue here; it is not safe to *our persons*. Nor was it. I observed, when I was giving that evidence, another intimation, in the sort of communication that takes place at the bar. I observed in the learned Serjeant a sort of toss of the head, when it was said, there was reason of fear from the terms of this Address. There *was* reason of fear from the terms of this Address, and abundant reason to fear. They say, "we recommend," and they style themselves a "Committee of Organization." The whole thing calculated to every man who read it, to make him believe as many honest men did who were not connected with conspiracies, that there was a great organized head; and it says, "we therefore recommend to the proprietors of publick works, and all others, to stop the one, and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this publick intimation, they can have no claim to." This was a clear intimation that their intention was what I believe it was, and have no doubt that it was, to damage and destroy those manufactories which did continue work. The object of those people was to stop work, and to act by intimidation in every possible way. My learned Friend, in opening the case, was very far from stating that it was not the subject of fear. He said, "no man can be at a loss to interpret the real meaning of these words;" and then he said, "not

a recommendation and advice, but the perilous order of an over-ruling multitude." Whether they had that over-ruling multitude is more than I can say; but every body who read it must have supposed they had, and were about to use it in the way these cotton-spinners believed. You have had all the way through in evidence, that they acted from intimidation. You have the evidence of M'Lean's saying something about seeking their rights, and the old Gentleman tells you it was received with general disapprobation; he says "with apparent disapprobation."

Then you have this man, supposing he was one of the people present there, which was not proved, for Wilson says he does not know that he was there,—so I may take it he was not there, but I will take it he was there,—are you to conclude he was not one of the persons who expressed that disapprobation? I believe in my heart that he was, and I will tell you why. I asked a cross question, the result of which was what I had not anticipated, and I received an officious caution to take care of those questions; and I said I relied on my case. I did so from this, that by that time I found I was not misinformed. From that moment I had confidence, that though some things might come out a little less on one side, and more on the other, I had not been deceived in any thing stated to me; and from that moment I felt relieved from a great load and pressure, and went on with cheerfulness in the cause.

Then you have the evidence of Buchanan, the clerk, who swears that Munroe told him when he asked him to come to the works again, that he had been threatened. I might have fatigued you by bringing half the people that were in this cotton-mill; I brought as many as I could, they all declared they acted under an impression of terror. There might be some persons who did not act under that impression. There might be persons connected with those conspiracies, or with the designs likely to be forwarded by them. I know nothing of that. No such person has appeared here; and if he had appeared, there is no evidence that this man was connected with it, not the least. But here you have positive evidence that he said, which is perfectly good evidence, that he was under the impression of fear.

Then the circumstance of the wages is accounted for—for you have the evidence of the very man who supplied them with goods himself, and no other person who supplied them but himself. He is what we call a merchant, and supplies the people with every thing, and he declined giving credit. I am not entitled to say to you that they were told that, but I have a right to infer it. Then I submit all this is accounted for; and if it is, I leave it to you, with the observations I have already made.

Again, I must apologize to you for having trespassed so long upon your time. I will not trespass longer by my apology. I think I have not said one word that has even a tendency to induce you, from any effect produced upon your feelings, to alter your verdict from that which you ought to give. It is what I ought not to have done if I did it, and there was no occasion for it here. The man's character has been detailed. He is not only said to be an honest man, he is not only said to be an industrious man, but he is said to be an affectionate man, and a quieter of ill-disposed men. This is not the evidence of a short time; it is the evidence of of nine, ten, or eleven years, given by the witnesses for the Crown; not only so, but given by the persons in whose employ he was, and under whom he worked; and if any thing were to be permitted for a moment to operate upon your feelings, I am sure it would be what you observed when that decent old man came into the box; when you saw how he was affected, and how it affected that man now in your eyes. No testimony could be stronger either to his general conduct, or to the affectionate nature of his disposition. Traitors are not made of this sort of stuff; those are not the characters that are likely to lend themselves to these sanguinary designs. Gentlemen, this is an observation which I think it quite fair to make to you. I have already detained you too long, and I will detain you no longer than to say, that, notwithstanding the anxiety I felt when I first entered the Court, I sit down, leaving this man in your hands, without any anxiety whatever.

REPLY.

Mr Serjeant Hullock.—May it please your Lordship—Gentlemen of the Jury—In rising to address you at this stage of the proceedings, I certainly feel myself under some degree of embarrassment; not, Gentlemen, from any anxiety on the subject of this case, because, in my view of it, it ought to excite none in my mind; but, Gentlemen, it does appear to me that that view of the case is so little consistent, is so little like that taken by the learned Counsel on the other side, that either they or I must have most egregiously mistaken the subject that you have to decide upon; because, Gentlemen, I humbly submit to you, that the case is one entitled to your serious consideration, and a case which must ultimately call on you to find that verdict, which justice shall imperiously demand at your hands, especially as, in my humble conception, the case that was left for the Crown has been very considerably augmented by the argument and the facts which have been given in evidence for the prisoner.

Gentlemen, it is no part of the province of myself, or of those with whom I have the honour of being allied to-day, to endeavour to force from you a verdict against the unfortunate man at the bar, through the medium of impassioned eloquence, or appeals to your feelings or commiseration; to a certain extent that may be fair, and to a certain degree it may be and ought to be practised perhaps, by those who stand in the situation of my learned friends; but, Gentlemen, all that I have to do,—and believe me I feel no other anxiety, because it would be no pleasure to any individual that a verdict against this man should take place, unless that verdict shall, in your judgment, be necessarily called for by the evidence in this case—but, Gentlemen, it is my province merely to state to you, which I shall do with as much brevity as I can, and with as much humility, the law on the case, and

then to call your attention to those facts which have been so long lost sight of by the Counsel for the prisoner.

Gentlemen, it was stated to you by both my learned Friends, that your verdict is to be founded upon the evidence in this case:—that is all that I seek for, and I think I shall be enabled to satisfy you—unfortunately able to satisfy you,—that the evidence in this case will warrant no other verdict than one unfavourable; not perhaps to the extent of the life—but certainly one which must put in jeopardy the life—of this unfortunate individual.

Gentlemen, before we proceed to the facts of this case, it will be necessary for me to call your attention to some observations which were made by both my learned Friends, in the outset of their addresses. My learned Friend, Mr Grant, has, upon several occasions stated, that this was one of the oddest cases of High Treason that ever he saw; and most certainly, Gentlemen, if my learned Friend will confine his reading and his researches to cases which took place in the reign of King Richard the Second, in all probability he is right; but, Gentlemen, those are not the times, those are not the periods to which we are to have recourse for the law upon this subject; because, undoubtedly, your country stands exempted from any imputation of the sort; but that to which I have the honour to belong most indisputably has, of late years, furnished too many opportunities for revising, for considering and deciding the law on this subject, to render it either necessary, or, I should almost say, decorous to occupy you from hour to hour, in citing from musty books and records, cases which have no earthly bearing on the case before you. With respect to the law of the time of Richard the Second, or the different Richards, and the Edwards, I mean to say nothing at all; I leave the full impression, whatever it might be, which was made by that long and elaborate reading, I dare say a faithful reading, from the different books; I leave my learned friend in full possession of that impression, whatever it might be, if it made any on your minds, without offering to you a single word upon that subject.

Then, Gentlemen, what are we trying? The learned Counsel alluded to this indictment, and one might have

thought that in the mind of an English lawyer—for my learned friend has an advantage over me; for, in addition to great experience and great learning at the English bar, he possesses all that talent, and all that information by which the bar of this country seems to be so peculiarly characterized; but I think it might have been sufficient if he had found that this was an indictment sanctioned by practice and precedent, without endeavouring, in point of fact, to say how he, if he had been an officer of the Crown, would have framed it. When that time comes, he will shew us how he will do it; but I know him too well to suppose he would venture to go out of the ordinary track, which we humble individuals on this side of the bar are satisfied with treading.

What is this indictment, Gentlemen? It charges against this individual four sets of Treason; and my learned Friend was mistaken, when he thought my learned Friend on my right hand had abandoned the first count of the indictment; he never intended it. I will tell you what he did; and think I shall explain to you, even new and novel as the subject is, the nature of this charge, and the reason why this indictment has subjected itself to this species of insinuation, rather than imputation, that has been cast upon it.

Gentlemen, I must refer to the act of Parliament of the 29d Edward III. By that act of Parliament it was made a Treason to levy war against the King, or to compass or imagine his death. The first count in this indictment is founded upon the latter branch of the statute, namely, it is for compassing and imagining the death of the King; and I have no hesitation at all in saying, and I say it without the fear of contradiction, that the evidence which I shall by and by more particularly call your attention to, does, in point of law, or rather in point of fact, sustain the first charge in this indictment.

The second count is also framed upon that old act of Parliament; and it is for levying of war. My learned Friend stated, there was no evidence to warrant any application to you to find a verdict upon that count, and therefore I shall not trouble myself or you with any discussion upon that subject.

The third and last counts are founded on a modern act of Parliament:—in the construction of which my learned Friend has rummaged all the books in his library, to explain what an act of Parliament meant passed in the 36th of the King, by adducing decisions three hundred years before;—that is an odd way of explaining the meaning of an act of Parliament—that is a new mode of explaining statutes. The two last counts in this indictment are founded upon that act of Parliament, and the overt acts, as they are called, are the same in every one of those counts; the Treasons are different, but the acts by which they are to be established are the same.

Gentlemen, overt act is a technical expression. It means neither more nor less than this:—If I charge a man with compassing the King's death, the law requires I should state in what way that intention, which is the act of the mind, is to be made out; the operation of the mind cannot be ascertained, or cannot be established to the human sense, without shewing what the man did. If I entertain an opinion to-day concerning any of you, that must rest with myself until I establish the motive of that opinion by doing something concerning it. Suppose I should think, or intend, and imagine that I would be the death of one of you, nobody could take cognizance of that until I shewed that that was my intention—until I brought a sword or a pistol, and followed you to your house, or from place to place, in order to carry that intention, or that imagination which I had conceived, into effect. Therefore, the law said this—it made in point of fact the intention to do something which concerned the King, the same as the actual completion of that something with respect to the individual; inasmuch as it cannot be evidenced but by fact, and inasmuch as a person might come to trial under a total ignorance of the nature of the evidence intended to be adduced against him. The statute requires this—(the statute of William III., a modern act, comparatively speaking)—that you should in your indictment state the overt acts, and deeds, and circumstances, by which the intention of the mind was to be developed and shewn to the Jury. And therefore, Gentlemen, those overt

acts,—about which so much has been unnecessarily said, much, which, considering the learning, and talent, and experience of my learned Friend, I think might have been spared; because, unless it was to shew that he knew many things quite irrelevant to this subject, I cannot tell why he made those observations; the overt acts are nothing more than the series of acts to be given in evidence. For instance, supposing the Counsel for the Crown found it necessary, or rather wished to give in evidence any other fact, or any other point than that detailed in the indictment, they would be precluded from doing so, because you are to state, upon the face of your indictment, every thing you mean to prove against the prisoner, or attempt to prove against him. Therefore, every man knows, (and you will readily agree with me in this)—that many accidents may interpose to prevent the Crown from proving a series of acts, or evidence stated on the record, either with respect to some mistake in the designation of a witness, and sometimes witnesses perhaps may be rather shy—they may feel some difficulty in disclosing to the whole extent of what they know upon the subject; so that it is not always, in point of fact, a good ground of imputation upon the Counsel for the Crown, that there are more overt acts in the indictment than are proved before a Jury. But recollect the consequence, and with this I shall close this part of my observations, that the proof of any one of those facts, provided you shall be of opinion that it was done and undertaken with the intention imputed, is sufficient to call on you for your verdict of guilty.

Now, Gentlemen, we will go on by degrees. Gentlemen, most indisputably you will not be called on by the Counsel for the Crown, and they expressly and distinctly disclaim all such ground of claim or demand upon you, to deliver your verdict upon mere declamation; but they will call upon you, because they are bound to do so, to find your verdict according to the evidence in the cause, according to your consciences, and according to the solemn obligation under which you are sitting in that place. If, Gentlemen, after I have submitted the few observations which I shall offer to you, you shall be of opinion that the evidence in

this cause does not in point of fact warrant you, or rather, I will say, compel you, as honest men, to find your verdict against this unfortunate individual, discharge him :—But if, on the other hand, you shall find, upon a full, deliberate, and dispassionate view of the different facts which have been proved before you, that there is no other alternative, that there is no other conclusion to which you can arrive, but that of a verdict unfavourable to this man, then your duty is plain, although it would be idle in me to affect to say that this is one of those cases which is marked so much by acts of atrocity and violence, as to render this man's fate so fatal, that the last sentence of the law must be put in execution upon him ; but it is not for you to administer mercy ; it is not for you to say, how the Crown ought to limit, how it ought to confine or narrow, the judgment which it may think proper to execute on this individual ; with that you have no concern. If, however, you feel bound, as I think you will, to return a verdict against this man—if you should think that his character, which cannot affect the nature or quality of the crime—that his character, or other circumstances in the case, should in your judgment render him a fit subject for recommendation to that quarter where alone that recommendation can be of any use, I beg leave to say, in the name of the Crown, or rather of the officers of the Crown, that that recommendation will be most cheerfully forwarded, and with all humility enforced as much as it can possibly be. That is not a question for you to try. The question is not what punishment ought to be imposed upon this man,—but has he, or has he not, been guilty of the charge imputed to him?

Now, Gentlemen, I beg to call your attention very shortly to the law upon the subject. I shall call your attention to the law from authorities which are living—from those by whom the law upon the subject has almost within these few days been laid down in another part of the island ; I shall call to your attention a few authorities upon that subject, which, if I am not much mistaken, will set this question in a clear point of view. You will, however, take this from me, that whatever law is to regulate your conduct or decision on this occasion, is not to be derived from my learned Friend

on the other side, or from me. The Judges who preside on this occasion, and who act under the same obligation as yourselves, namely, the sanction of an oath, the Judges will state the law, and it is your bounden duty to receive the law from them, and take that law as it is delivered.

But, Gentlemen, my learned Friend, Mr Grant, in the heat and zeal of the moment,—because I am quite sure he did not mean it,—stated to you that *you* were to put a construction upon the words of an act of Parliament. That is not law, that the Jury are to put a construction upon an act of Parliament! When was that decided? where is it to be found, except in the gratuitous assertion of my learned Friend? who appealed to himself in a way I never heard an appeal made in a Court of Justice—he appealed to his honour and conscience. I know no man possesses more honour and conscience out of the church of Dumbarton; but I can rely on neither in this place as authority on points of law. Gentlemen, it is not your duty to construe an act of Parliament—the words of the statute are to be construed by the Judges;—you are to say whether or not the facts imputed to the individual be or be not proved;—you are to say whether the facts which we state on this indictment have been proved, and whether they have been done with the intention ascribed. If you should be of opinion that they are, then the learned Judges will tell you that High Treason has been committed; why, because according to the construction of the words of the act of Parliament, the truth of those facts constitutes in point of law High Treason.

My learned Friend said, Why, I will illustrate it by the case of murder for instance—a happy illustration for the law of the land! Gentlemen, the crime of murder consists in a question of law, and it consists not in a question for the Jury; it never was, and I trust never will be so—it never will as long as the law of England continues to wear the semblance of a science. What is murder is matter of law; but what are the facts that make the crime, are questions of fact for the consideration of the Jury. The killing a man with malice aforethought,—whether I use language appropriate to the country, I do not know,—but killing a man

against whom you entertain previous malice, is murder;—but that is not a question for you to decide, whether it be murder or not; all that you have to decide is, whether he killed the man, and whether he killed him with malice aforethought. The moment you decide those facts, the Court will say, Why, that is murder. If you shall say he killed a man; very true, but he did it in the heat of blood—he did it upon sudden quarrel—he did it upon a sudden provocation; the Court will say, That is not murder, that is manslaughter. So, Gentlemen, you see the fact and the law are, as they ought to be, always distinct. And I am sure you will not think I wish—for it is not my intention, I entertain a very different opinion—to make any attempt to disparage your understandings, when I say that I think that the law will be as well administered by the learned Judges as by you.

There is something remarkable in the statement of the law made on the other side. They began as early as they could cite it—Magna Charta was cited, I think. My learned Friend said it was the Magna Charta of Treason.

Mr Grant.—No; that in Treason it was of as great importance as Magna Charta.

Mr Serjeant Hullock.—It is singular, while my learned Friends were laying down the law, or stating it, and endeavouring to explain it,—because that is the humble duty of an advocate at the bar, explaining the law to you, to enable you to apply the law to the facts of the case,—it is somewhat remarkable it did not occur to the understanding of my learned Friends, that they should not stop just where I am going to begin; because the other part of the law had no bearing to this question, and that which I am about to call your attention to does bear and immediately apply to it.

Gentlemen, I do not know that I need state the statute, because the law will be better stated by the learned Judge, who will have to state the facts to you; but I shall call your attention to the first count of this indictment—the first count, which I stated before; and I mean to submit to you, that the first count and the last count of this indictment are established by the proof. I throw out the third, not, however, because it is not also established. But for the purpose

of simplifying and narrowing the question for your consideration, I mean to take the first and the last count—the first is for compassing and imagining the death of the King, and the last is for conspiring to levy war against the King, in order to compel him to change his measures and counsels. Therefore, the question you will have to decide will be this: Was there a conspiracy to levy war? If there was that conspiracy to levy war, was the unhappy individual at the bar a party to, and implicated in, that conspiracy? If he were so, was that conspiracy to levy war for the purpose charged by this indictment, namely, in the last count, to force the King to change his measures and counsels?

Now, for the purpose of sustaining the first count of this indictment, it is not necessary that a conspiracy should be established to your satisfaction, to assassinate or offer personal violence to the King, because the law, as well as common sense, says, that if you undertake anything, which, in its consequences, cannot but produce danger to the King, that is contemplating his death. If I, therefore, conspired to take the King a prisoner, it would be evidence that I conspired and imagined his death; because, although his death would not be the inevitable consequence, yet it is more than likely that it would probably ensue from that sort of proceeding, and, therefore, the law says, that shall be considered as a compassing and imagining the King's death, *per se*.

Gentlemen, what is the law upon that part of the case? a book has been referred to, and I do not mean to disparage Mr Judge Foster's opinion; he was an eminent lawyer, and I understood from my learned Friend (I did not know it before,) that he was a whig; therefore, if that circumstance gives any additional authority to his writings, of course he is entitled to it; but, however, Gentlemen, he was a very eminent man, a great lawyer, and an honest man, and therefore we need not go any further to exalt his character or credit with you, or any Court in which his authority can be stated. I will tell you how he states that law—I will not occupy much time in doing so. "The care," he says, "which the law has taken for the personal safety of the King, is not confined to

actions or attempts of the more flagitious kind, at assassination or poison, or other attempts, directly or immediately aiming at his life; there would be little difficulty, provided a man was to attempt a thing of that sort, in saying, that he was intending the death of the King. It is extended to everything wilfully and deliberately done or attempted, whereby his life may be endangered; and, therefore, the entering into measures for deposing and imprisoning him, or to get his person into the power of the conspirators, these offences are overt acts of Treason, within this branch of the statute." Then he goes on to state that which has been read before; for experience has shewn, that between the prisons and the graves of princes, the distance is very small.

Now, Gentlemen, you see, therefore, that the circumstances which are necessary to constitute overt acts of High Treason within this part of the act of Parliament, are not of a sort that are levelled immediately and directly at his life, but that the act, in point of fact, contemplates measures and proceedings, which may ultimately lead to such a state of things as may endanger his existence. If, therefore, Gentlemen, a person or persons conspire to levy war, and I should say, Gentlemen, to levy war for the purpose of altering the religion of the land—if it had not been so distinctly, and so frequently, and so minutely laid down to the contrary by my learned Friend, I certainly, not professing and feeling that I have the information upon the subject which he possesses, I should have had no difficulty or doubt—I should have thought myself liable to some strong imputations of a sort, I do not mean to mention, if I could have entertained any doubt that such conspiracy was High Treason. No man ever saw in an indictment for levying war against the King, the purpose of levying war; the charge is, That A. B., together with divers other false traitors, did conspire to levy war against the King within his realm.—Well, is not it a levying of war, rising up in rebellion, for the purpose of overturning the religion of the land? What was the case of Lord George Gordon? will any man, who remembers that case, tell me what that case was but a levying of war, for the purpose, not of subverting religion, but

ng something which, if it had succeeded, would have that of overturning the religion of the country? entertained a doubt that was High Treason—but off on a different point; no man was so wild or vi-ary, or had read so many books, as to think it was not High Treason.

Mr Grant.—I do not understand you to say that I put it, that the levying a war to alter religion was not High Treason.

Mr Serjeant Hullock.—I took you down so.

Mr Grant.—I said the conspiring to do it, where there was no war levied, was not High Treason.

Mr Serjeant Hullock.—It will take it so; in my judgment it is the same thing; and I aver distinctly, that a conspiracy to levy war to subvert religion is High Treason within the 36th of the King, or that act is a dead letter.

Gentlemen, I had got Mr Justice Foster's book, and was stating to you, Gentlemen, from Mr Justice Foster, that for the purpose of establishing the first count of this indictment, it is not necessary that there should be an actual attack upon the person of the King, or a combination for that purpose. Gentlemen, I will call your attention now to one modern authority upon that part of the case, which is to be found in the first volume of the Reports of the Trials for High Treason in the year 1817; a trial of a person of the name of Watson, who was tried indeed, along with a person who suffered very recently for the same offence, for the facts which were called the Spafields Riot, where the persons proceeded to break open shops and houses, and then proceeded through the streets of London, committing acts of violence, and making an attack, childish and ridiculous enough, on the Tower of London. This is a report of that trial; and I will state to you the language of a learned Judge, much distinguished by his law and his learning, Mr Justice Bayley. He says, "The law considers the offence, compassing and imagining the King's death, or deposition, not to be confined to those cases in which it enters into the mind of the person against whom the charge is made, actually to destroy the King, or actually to depose the King;

but if his object is of such a nature, that in the means taken to accomplish that object, the life, or safety, or continuance upon the throne of the King, is likely to be brought into hazard, the law considers the entertaining and acting upon an object of that kind as necessarily contemplating what, if the Treason were successful, probably would be its ultimate end, namely, the death or deposition of the King. Every man," he says, "is considered as having in his mind whatever is the probable consequence of the means he is adopting." If the acts charged lead, in point of fact, to the result here stated, it is natural that that person must be considered as responsible for them. If, therefore, the prisoner at the bar shall be found to have entered into a conspiracy,—to have adopted a course of proceedings, calculated in its termination, if it were successful, to involve the King in personal danger,—then, beyond all controversy, in point of law, he would be guilty of the charge imputed by the first count in this indictment.

Now, Gentlemen, this brings me, and I shall say no more upon that part of the case, to the last act of Parliament upon this subject, the 36th of the King; and either my learned Friend has misconceived the provisions of that act of Parliament, or I have done so; because there is no medium between us—there is no middle course. I understand it differently; I entertain a different opinion upon the effect of that law; and if my opinion be correct, his is not so: if his, on the other hand, be correct, mine is altogether erroneous; but you will take neither opinions upon this subject; you will take, as I said before, for your authority upon this subject, the law laid down by the Court, who here preside.

Gentlemen, by this act of Parliament, the following enactments are made. I shall only cite the parts relating to this case: "If any person shall intend death or destruction, maim or wounding, imprisonment or restraint, of the person of our Sovereign Lord the King, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his Majesty's dominions or countries, or to levy war against

his Majesty, his heirs and successors, within this realm,"—for what purpose? "in order, by force or constraint, to compel him to change his measures or counsels; if any one, therefore, shall encompass or levy war against the King within his realm, in order, by force or by constraint, to compel him to change his measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, both Houses, or either House of Parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other his Majesty's dominions or countries under the obeisance of his Majesty, his heirs and successors, and such compassing, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed;" if he shall compass, I say, to levy war within the realm, for the purpose of compelling the King by force to change his measures, and such intention and compassing, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, "such person being legally convicted thereof upon the oaths of two lawful and creditable witnesses upon trial, or otherwise convicted, or attainted by due course of law, then every such person and persons so as aforesaid offending, shall be deemed, declared, and adjudged, to be a traitor and traitors." Anterior to that act of Parliament, the crime of levying war consisted either in actual warfare, in actual conflict with the King and his troops, or in something which had the appearance and solemnity of war. For instance, supposing that individuals intending to levy war, or intending to raise an insurrection in the country, for some general purpose, no matter what it was, provided it was not for a personal purpose of their own; if any individuals should set out from their home, armed or unarmed, in any number, whether few or great, with an intention either to join others for a similar purpose, or to act by themselves, and of themselves, for the purpose of doing something for accomplishing a general purpose, for changing laws, or anything of that sort, or for the destruction of all inclosures, all chapels, or all churches, or altering the religion of the country,

(for I contend that is High Treason, if ever such a thing was known in the kingdom,) that would be a levying war under the old act of Parliament; but unless they did that, unless they took those steps, unless they set out for the purpose, or unless they took some measures to evidence their intention under the old statute, that would not be a levying of war. Then what does this act do? It closes the door on the chasm that existed before it, and puts the evidence of High Treason by levying war, upon the same footing as the evidence of compassing the King's death existed before. Before that act of Parliament, a levying of war could not be evidenced by an overt act or deed, short of what I have already adverted to, but it may now, and in point of fact that was the only object of that statute; the only object of it was, not to create substantive Treasons, but to furnish additional evidence, or rather to render the Treason which existed before less difficult of proof. You could not prove a levying of war before, without shewing actual hostilities, or without shewing that a party went out in some sort of way to enter upon hostilities;—but now you may. If you shew a man conspired to levy war to compel the King to change his measures by any overt act, you make out the Treason stated by this act of Parliament, but not a *new* Treason.

When my learned Friend applied to the language of Lord Ellenborough, he applied to the language of an eminent Judge, but to language not called for on this subject. The case was that of the King *v.* Watson; that was a case of levying war. That case did not turn on this act of Parliament; that case turned altogether upon the effect of the circumstances as applicable to the Treason created by levying of war; therefore, the Judge's attention was not called to this case; and I venture to aver, that those observations, when they are fairly and distinctly adverted to, will not be found to bear the construction attempted to be put upon them to-day. Therefore, you see, Gentlemen, by this act of Parliament, if you should be of opinion that the individual at the bar, together with other persons, conspired to levy war, if the overt acts stated upon this indictment should establish that to your satisfaction, then, I venture to pre-

sume, you will be told by the Court, that in point of law, that was a Treason within this statute.

Now, Gentlemen, in order to see whether one is warranted in what one is asserting, I shall call your attention to a late case, and I do it because my learned Friend did not take that trouble upon him; if he had, I certainly should have been quite satisfied with his reading upon that subject. Gentlemen, a late case, which you may know perhaps, which took place and grew out of what was called the Cato-Street Plot, which occurred recently in London, the object of which was to massacre the whole of the Ministers at one place, was decided on counts founded on this act of Parliament; and I will state to you what was laid down by my Lord Chief-Justice Abbot upon that occasion. He says, "By a later statute, by the 36th of the King, it is enacted, that if any person shall, within the realm, or without, compass, imagine, invent, devise, or intend death, or destruction, or any bodily harm"—he is only reading the act which I laid before you, therefore I need not repeat it—he states, "in each of the descriptions of offence that I have enumerated, except the levying of war mentioned in the ancient statute, the crime is made to consist in the compassing, imagination, or intention, (which are all words of the same import,) to perpetrate the acts, and not in the actual perpetration of them." You will have the goodness, Gentlemen, to keep in mind that distinction; "but then it is further required by the ancient statute, that the party accused of the crime shall be thereof provably attainted of open deed; and by the late statute, that the party shall express, utter, or declare his intention, by publishing some printing or writing, or by some overt act or deed;" he says, "the law has wisely provided, because the public safety requires, that in cases of this kind, which manifestly tend to the most extensive public evil, the intention shall constitute the crime; but it has at the same time, with equal wisdom, provided, because the safety of individuals requires that the intention shall be manifested by some act of the party, tending toward the accomplishment of the criminal object proposed." The criminal object imputed by this indictment is, that the

prisoner at the bar, together with others, did, in point of fact, conspire to levy war, that is, did begin insurrection and rebellion for the purpose of forcing the King to change his measures; and I think one can hardly argue, if it could be clearly made out to your satisfaction that the object was to make insurrection or begin a rebellion, that any other object could ensue if it were successful, (which has nothing to do with the case,) than to compel him to change his measures. They have not ventured to touch on that on the other side; neither of my learned Friends has said a word upon the subject of intent; they have not done that which they ought to have done, before they could make that confident appeal to you, and tell you this was one of those cases, the like of which was never seen before—but of that more by and by. "By the late statute, the compassing or intending to commit these acts, that is, to depose his Majesty, or restrain his person, or to levy war against him for the purposes I have mentioned, is made a substantive Treason." Now, we will see how that is:—"and thereby the law is rendered more clear and plain;" to be sure it is, because before the passing of this act no such count could be framed. It would be bad in law; and the party, if he had been convicted upon it, must have obtained an acquittal by moving the Court on the ground of there being no charge in law; and "thereby," he says, "the law is rendered more clear and plain, both to those who are bound to obey it, and to those who may be engaged in the administration of it. It may be proper for me to mention also, that it has been established in the like manner, that the pomp and circumstances of military array, such as usually attend military warfare, are by no means necessary to constitute an actual levying of war within the true meaning of the ancient statute; insurrections and risings for the purpose of effecting, by force and numbers,"—and, Gentlemen, you will find also that this relates to this part of the case,—"however ill arranged, provided, or organized, any innovation of a public nature, or redress of supposed public grievances, in which the parties had no special, or particular interest, or concern, have been deemed instances of the actual levying of

war,"—that is, under the old act of Parliament,—"and consequently to compass or imagine such an insurrection,"—now, mark, you will see at once the object and the effect of the late statute of the 36th of the King, he says, "Consequently, to compass or imagine such an insurrection, in order, by force and numbers, to compel his Majesty to alter his measures or counsels, will be to compass or imagine the levying of war against his Majesty for that purpose, within the just meaning of the late statute." So that you see that the evidence, by overt act or deed, of intention to levy war, is a Treason under the late act of Parliament, which was not so, or rather it was not evidence of it under the former act of Parliament. He says, "that any act,"—and this is an explanation of an overt act,—"that any act, manifesting the criminal intention, and tending towards the accomplishment of the criminal object, is, in the language of the law, an overt act." I shall by and by have occasion to call your attention to that part of the subject.

Now, Gentlemen, there is another passage in this book which I will just venture to read to you, and then I shall dismiss this part of the case. Gentlemen, the same learned Judge, in delivering his charge to the Jury, says, "Two of these charges, Gentlemen, namely, the compassing and imagining the death of his Majesty, and the actually levying war against him, were declared to be Treasons, by a statute passed as long ago as the reign of King Edward III. In construction of that ancient statute, it had been held not only in many cases passing in judgment in our courts, but also by the opinions delivered to us by grave and learned writers upon the law on that subject, under that statute, and according to its true construction, that all conspiracies and attempts to depose his Majesty; and all conspiracies and attempts to levy war against him, were overt acts of a treasonable intention to take away his life; because, as experience shews us, the death of the Sovereign generally follows his deposition. In order, however, Gentlemen, to remove any mistake that persons might fall into, a statute passed in the reign of his late Majesty," that was the statute of the 36th of the King, "similar in substance, and nearly so in lan-

guage, to several statutes which had been formerly passed, but which operated for a season only, by which the compassing, or imagining to depose his Majesty, or the compassing and imagining to levy war against him, or to compel him to change his measures and counsels, were each declared to be a substantive Treason; and as the evidence in this case," he says, and I say humbly upon the present occasion, "points more directly to the compassing to depose and to levy war against him, than to the actual intention to take away his life, the most simple way of presenting this case to you, is to direct your minds to those parts of the indictment which charge the compassing and imagining to depose the King, and compassing to levy war against the King, in order to compel him to change his measures and counsels." Therefore, Gentlemen, those are the parts of the indictment, without troubling you more at large upon this part of the case, to which I shall beg leave to call your attention.

Gentlemen, the question that you have therefore to decide is this—Was the prisoner at the bar embarked, along with others, in an enterprize which had for its object the forcing the Crown to change its measures and its counsels? Had the prisoner at the bar, along with others, any intention to raise war, to begin a rebellion in the land? If they had, was it for the purpose imputed? Because I admit, Gentlemen, unequivocally, and I trust it will never be taken from you as part of your province, that it is your duty to decide, in the first instance, ay or no, was the prisoner implicated in any such design: if there was any such design on foot, whether the object of that design was such as is imputed to it?

Now, Gentlemen, I pray you, what are the facts of this case? Gentlemen, the prisoner at the bar has been selected out of those individuals who were indicted along with him, for the purpose of being first tried, for a reason which I think you will agree with me is a pretty obvious, and a pretty good one; he, Gentlemen, is an individual not conversant in the manufacturing of pikes—he was a cotton-spinner. There is another man whose name is men-

tioned oftener in the progress of this inquiry, and certainly appears more active and more efficient, and more effectual in his operations, than the prisoner at the bar; I mean M'Devitt, who, it is clear, was active in making pikes, and did, during one, two, or three days, with his own proper hands, make a great number of pikes. It has been thought proper to select, in preference to him, the prisoner at the bar, for the reason I have alluded to. Gentlemen, it was the duty of those to whom the interests of the Crown were committed, to take care that a case of this kind should be brought before you; for though it is of importance to the prisoner at the bar, it is equally important to you, as members of the community; it is important to the peace and tranquillity of society; it is important to every man within the country to know, whether offences or proceedings of this description are to be passed over by observation, and by comment alone; whether they are to be passed over, and the persons who act in them suffered to pass with impunity; whether High Treason is to be little more or less than a name, and that persons, because they are poor, as it is said, but of that there is no evidence—persons, because they are few in number, obscure in situation, are to indulge in these notions of redressing grievances, and operating a change in the Constitution; and you have been asked frequently, whether against such obscure individuals as emerged from Duntochar, from Glasgow, or from Manchester, we are to entertain any just grounds of alarm for the preservation of our Constitution, from the machinations of such individuals as these. I say gravely, Gentlemen, that we are. What! Gentlemen, are these individuals to go forward, step by step, until their numbers increase, until their plans are ripened, and till they burst forth like a torrent, overwhelming all before them? And then we shall be told, who could have thought it, that a few miserable men, a few miserable cotton-spinners, in a cotton-mill at Faifley, or the cotton-spinners at Duntochar—who could have thought that they would have risen like a torrent in the land, overturning all before them? Gentlemen, unless you, by your verdict—(I ask not that verdict unless the evidence warrants it)—I

willing to risk that property which he had embarked in his works, provided the men would continue their operations. The men were unwilling to do so. I will call your attention, by and by, to a series of witnesses who have been called to support the case of the Crown; and I will call your attention to the evidence, by and by, on the part of the prisoner. But where is the evidence of danger, or threats? one man, it is true, says, 'One of the Munroes told me at twelve o'clock on Monday, that he dared not return to work, because he was threatened.' That is in evidence, Gentlemen; therefore take it so. Who threatened him? Is the man dead? They did not venture to ask the name of the man; they did not venture to ask the name of the person by whom he was threatened.' Who was the person? A great crowd of strangers were seen in the street of Glenhead during the Monday —mark that. Is there any evidence, that any one of those persons—that any one single individual, ever went to any of the works, at either Duntochar, Glenhead, or Faifley, and threatened these men, that if they prosecuted their work, they would incur personal danger? The men tell you distinctly, that although there was a crowd; although the streets were filled with strangers, yet all was tranquil, and quiet, as far as their demeanour went; and that no human being offered any harm, or ill treatment to any of these men, nor any body else. Where is this mighty case of terror and fright? It rests altogether in the statement of the Counsel; it rests no where else. There is no statement whatsoever, but in the gratuitous assertion, the interested and declamatory assertion, of Counsel. The first man called, said, 'It is true, I left work; I was afraid; I was alarmed myself; but I do not know what other people were.' The next man comes by way of clinching it, who says, 'I left work because others did;' that is his evidence. The first witness does not come up to the mark. The object of the testimony is to shew that Robert Munroe struck work, because he was afraid of working. The first witness proves he left work on that account; but the other persons did not. The second witness says, he left work because others did. The third said, he left work because the Address was up. The fourth said, he left work principally

on account of the Address. What was the other sort of reason? a sort of mongrel reason, you see.

Then, Gentlemen, who are those witnesses by whom this question, and this point of defence, is endeavoured to be laid before you gravely and seriously? Men equally guilty with those unfortunate men who stand within that bar. Why, that is one way, to be sure, of proving innocence, calling men who, with the same breath that they are attempting to remove the imputation of crime and guilt from the shoulders of others, are declaring that they themselves are equally liable to the same imputation. But, Gentlemen, the evidence fails in point of fact; and if it had not done so, I am sure you could not have relied on it for a single moment in a case like this.

Gentlemen, with respect to the force; they struck work early on Monday morning; the crowd did not congregate till the following part of that day, and one of the witnesses says all was quiet on Sunday; therefore, how does that fit in with the hypothesis on the other side? they prove, in the first place, no force was applied; and on the strength of that force they aver that it was; that is just their case.

Then, Gentlemen, the other part of their defence is this, that these men having struck work, they wanted their wages because their credit was expired. Is that, Gentlemen, to be wondered at? are men of any country (it is not likely in this, I think,) are men any where likely to give credit to men who are about to embark in a speculation of the sort imputed to these men? do you think it necessary to call the grocer from Glenhead or Duntochar, to satisfy twelve intelligent men of this country, or any part of the world, to prove that he said, "I will give you no credit? What credit can I give you who have struck work, who have put an end to the funds to pay me? How can you apply to me to give you credit? You have struck work, and you are going you know not what about." What is the object of that? if it be to shew the understanding and the feeling of the grocer on that subject, be it so; but I think he need not be called to prove it on his oath. I would have believed him on his allegation,

that he would not give credit to these people, without some expectation of being paid. What did they want with their money? They wanted to put themselves in a condition to set off on this enterprize which they contemplated. What was their object of pressing day after day for their wages? And give me leave to say, that, in my humble judgment, it was indiscreet, it was unwise, it was injudicious, in any master spinner, in any master of these mills, in Mr Dunn, to pay these men any money on the Thursday, as he states that he did. Gentlemen, if any thing could have restrained them, if any thing could have deterred them from embarking finally, and committing themselves in this momentous enterprize, which has brought them to this unfortunate result, it would have been by preventing their stirring from home. If they had had no money, they could not have gone upon a foreign enterprise of this description, character, and colour. Gentlemen, I think that is the whole of the defence in fact.

Now, Gentlemen, I pray you to turn your eyes to the case which has been laid before you on the part of the Crown; and then, I ask you, and I ask you sincerely, to lay your hands upon your hearts, and say whether there is any question with respect to the charge upon the present indictment having been completely and clearly established? These men struck work on the Monday morning. The object of this paper was an incitement to all individuals of that sort to take that step; what was the object of these men striking work, has my learned Friend ventured to suggest to you? Can you suggest to yourselves the object of striking work? The object imputed by this indictment is, that they struck work to forward a treasonable purpose; notwithstanding the surprise with which my learned Friend has affected to say, that he never heard of such an overt act as this to prove rebellion. Gentlemen, overt acts are as various as the wickedness and invention of man; any thing is an overt act which in your judgment was calculated to further and promote the object imputed by that indictment. What was the object of striking work? Was it the object which has been stated, namely apprehension? I say it was no such thing;

I have already adverted to that; it was no such thing, because the Address contains no menace or threat of that sort; it warrants no argument of the kind. What did they strike work for, I pray you? I do not affect to charge these men; (and, therefore, a great part of that argument I have nothing to do with,) I do not charge these men with putting up this Address, or, still less, with composing it; I agree in the lamentation of my learned Friend, that the author has not been detected, because I admit he would have been a proper subject of punishment; but, Gentlemen, I do not impute to this individual the putting up this Address; but he knew of it on the Saturday. How does that appear? My learned Friend seemed to think that, because Robert Munroe was not at the elbow of every man whose observation has been given in evidence before you, he is not to be affected by that: That is a mistake altogether. Where it appears that the prisoner at the bar, together with other persons, are embarked in a common object, whatever is said or done by each of them separately, not only in the presence, but in the absence of the person, provided it has a tendency to promote and advance the common object, is evidence; and, therefore, when these men are all cotton-spinners in the same place, although he was not at this meeting, or that he was clearly at some of them; and if he was, and their object was what I state it to be, he was equally criminal in them all; he knows of the Address that appears, for the first time, on the Sunday morning; it is in the hands of some of these workmen—Stewart, on the Saturday: It is shewn by him to Slimmond, the spinning-master; and Slimmond returned him very indiscreetly the paper; he knew the contents of the Address on the Sunday; it was notorious; and on the Monday morning what do these men do? they go to the mill, and apply to Mr Wilson, that very candid gentleman who was examined in the course of this inquiry; they apply to Mr Wilson, and they state that they must have their wages, or they say they will work no more. I do not know how he puts it; but that gentleman, who had so much to say about his candour, that candid Gentleman, almost told you nothing but of his own candour; al-

though his heart was as naked as his hand, he would tell you nothing, and it was extracted at last by an examination, so like a cross-examination, that the Gentlemen mistook it for such, which is always admitted when a witness will not speak out, because the object is to obtain the truth; if that is the object, I appeal to your understanding upon the matter, whether you ever saw such a witness examined before, or ever will see one again. I appeal to your understanding, whether that man did not make out a good legal title and claim to an examination of a very different description to that which was applied to him. Can you believe, —and I appeal to you all,—can you believe that that man stated to you all that he knew upon the subject? I know nothing about Mr Wilson, and I care as little about him, but I will say a more reluctant and backward witness I never saw in the course of my experience, now of some duration; he told you scraps, and fragments, and pieces of conversations; he recollected half a sentence, then he forgot the remainder; then it came into his head. And then he, in consequence of having been a reformer for twenty years, would wish to tell every thing, and all that sort of thing. You know what he told, and I ask you, what you think he did not tell you? Gentlemen, the Crown has been under difficulties upon the present occasion; but the difficulties which arise out of occasions of this sort, you know, as well as I, to be, that it is impossible to get impartial disinterested witnesses on questions of this sort; you cannot have loyal men, who are above them, and will not condescend on acts of this sort. Who are to prove them? You must have individuals contaminated by the same proceedings, and who have wishes and feelings on the subject; and you must have difficulties to encounter, which, I think, have been sufficiently evidenced on the present inquiry.

Now, I pray you, for what purpose did they leave work? How are you to find out the purposes of men, except by their own declarations, or by the test of their conduct? Try them by both; the declarations were, that they were about to seek their rights, and Wilson told you one man talked something about reform. What rights were they going to

seek? Where were they going to seek them? At Glasgow. At Glasgow! Why go to Glasgow? because it was at that time notorious, and it is proved to you, by the evidence of Mr Dunn, that, in point of fact, within a day or two of that, Glasgow was likely to be the centre of uproar, confusion, and rebellion; he stated it was crowded with people; it is true, he said all sorts of people. No man meant to say the manufacturing people had so far usurped the streets, as to exclude women and children from it, and every other person; but it appeared that it was of the lower class principally, and every man knows how a crowd of that description is generally composed:—But it is notorious, Glasgow was in confusion at that time. Where were they going then? to Glasgow. To effect what? I affect not to go over the minutiæ of the evidence, that you will hear from his Lordship; they were going to seek their rights, because they would be expected. Why, Gentlemen, you would be expected at home last night, and I am sorry you were not there; you were expected at home—why? because there was every reason to believe you would be there. Then I appeal to your understanding—why were these men expected to be there? Must not they have had some communication, or have made an offer? If I offer to dine with a gentleman, he expects me, in whatever way it is put by the wit of man; and the wit of my learned Friends has not been applied to it, because they cannot grapple with it. I say, no man can state the reason they were expected there, unless they were invited, or had offered to go there.—Is that proceeding accompanied with any act on their part? This man's being at the forge, or the spade-mill; I wish, when my learned Friend was employed on that part of the case, he had condescended to tell us why a cotton-spinner did not do that which would have been more natural, more likely; either have gone to his residence, and kept himself in his house, and in the bosom of his family; or have done that which other men seem to have done, walked about from day to day, if any body can believe it. I say, why did not Robert Munroe, the prisoner at the bar, adopt that course of proceeding, or something equally unoffensive? why, I ask you, and you will tell me by

your verdict, did these men go, within an hour after the refusal to work, to the forge at Duntochar? 'Oh, then he did nothing there:'—Did he not? But, Gentlemen, the other persons who were there did whatever the other persons there did; he is equally guilty. If M'Devitt made pikes, Blair assisted him; M'Devitt was stripped; there were people running backwards and forwards, taking this hot iron to the hammer, where it was converted into something long and sharp, which, though the men affected they had never seen one before, they tell you were pike-heads; they do that till three or four hundred weight of old files are actually exhausted, and worked out by the operation I am now alluding to. Gentlemen, he takes up something,—and really I wonder my learned Friends should think that that was a part of the case on which each of them seems to have relied, —he took up something——

Mr Grant.—It is not proved he took up any thing.

Mr Serjeant Hullock.—No, it is not; but he was seen sharpening pikes afterwards.

Mr Grant.—No.

Mr Serjeant Hullock.—Gentlemen, my learned Friend may interrupt me, for I think it none, but he is mistaken. I repeat it, I am not alluding to the sharpening the plane—we will leave out that operation; but you will find amongst your notes, that those men, particularly this man, was seen at a grinding-stone, where his brother was sharpening a pike; and I will tell you the man who proves it, for I am sure my learned Friend will admit me sometimes to be accurate, if it is only by accident. I certainly mean to be so. It was a person of the name of Andrew Robertson. Gentlemen, I think there was one of them there, but you will see that; but be that as it may, you see he was at the forge. Gentlemen, did he do nothing at the forge? Did he stand still? Why was he there at all? But it is in evidence before you that he and his brother too were active in taking fire from the finishing-house to the furnace. Why, what purpose was that for? One of the men, Taylor, proved yesterday, that Robert Monroe was present at the finishing-house, and that he was the man that he saw taking out the fire. Taking the

fire for what? What has a cotton-spinner to do at a furnace, or at a forge-mill—that is a question for you to decide: If you think, as I humbly submit you must think, that this man left off work, and went to that forge for the purpose, in point of fact, of preparing himself to act in a meditated rebellion to subvert the government of the country, and no other object can be stated, your verdict most undoubtedly must be against him.

One of the Mr Dunns spoke of repeated applications to him. They wanted their wages, you see. Mr Wilson, with those habits which seem to be peculiar to himself, those dilatory habits, put off the settlement of the wages; he seems to insinuate, that the object was to delay them; but applications were made to one of the Mr Dunns, through the medium of a sort of deputation; and what reason did they give, Gentlemen, for those applications upon that occasion? Did they say they dare not work? Did they say that they had any object in view? Yes, they did. The reason they gave was, that they did not know how soon they might be called upon—how soon they might be called upon—called upon for what purpose? I pray you, Gentlemen, assign a reason for this call other than as I impute to it, namely, that they might be called on by those who expected them at Glasgow.

Gentlemen, you recollect also a spade-maker at Duntochar who was examined. You recollect, Gentlemen, that when he went from there in the morning, he went out and locked the door to go to breakfast. He opened the door afterwards, and found the place full of men—this is not the same forge. And he states, that amongst the persons who were there, the two Munroes were—the prisoner at the bar and his brother, and M'Devitt, one of whom was the most active man at the forge on Monday morning, and the other two went there merely as spectators to see how pikes could be made, and how sharpened, and of what materials they could be formed. Those men were in the shop of this man, and he states to you distinctly, that they went into the forge with fire which they got out of the furnace or some place; that the Munroes were there active in that operation; and if they were, for what earthly purpose was that? Then he states, that at that time they told him their purpose was to

make pikes; they wished him to make them, but he refused; but they told him, their purpose was to make pikes; and he told you afterwards, that he returned in the afternoon; that at that time the place was full; that they threatened his life; that he was obliged to depart, and in point of fact, he went there no more.

Now, Gentlemen, I ask you whether, putting all these circumstances together, without having any reason either suggested or assigned, much less proved, for these different steps—I ask you, Gentlemen, to say what reason had these persons to strike work, and after that to go and attempt to procure arms, to manufacture pikes, and to arm themselves with that species of weapon—for what earthly purpose was it done? My learned Friends have not ventured to suggest to you any thing like a reason; they have not ventured to tell you that, which it would have been curious to have heard, and which I waited for considerably at the time; it would have been curious to hear them state to you the reasons that the Munroes, and all these cotton-spinners, had for going to the forge at Duntochar, forging the pikes, sharpening them afterwards; afterwards going to the place of Mr Taylor, the spade-finisher, and doing all those acts proved by him and by others. For what earthly reason did they do all these things, if it were not, in point of fact, to carry into effect the reason assigned in the outset, that they were about to recover their rights; that they were about to go to Glasgow—to go the place at which they were expected?

Gentlemen, these are the circumstances of the case. If you shall be of opinion that these different acts were, in point of fact, undertaken and completed for the purpose that I have taken the liberty of suggesting, namely, for preparing for war, or to join some persons who had taken up arms; the intention by which these things were done, is what you have to try, and if that be so, this is High Treason. Gentlemen, you will, in common with every man of feeling and humanity, commiserate the situation of such individuals, whoever they may be, as may be placed in a situation like that of the prisoner at the bar; but, Gentlemen, it is one thing to feel commiseration for an individual, who has by his own crimes and offences placed himself in that situation, and another

thing, to forget the obligation under which you are acting. Do the Counsel expect you shall, as a matter of feeling, because they have expressed their feelings strongly, and perhaps no stronger than they really are,—can it be really expected, that you are to abandon that obligation, to forget your oaths, merely to be compassionate? Gentlemen, you are acting under the sanction and obligation of an oath; you have one straight forward course to pursue,—your duty to yourselves and to the country. You certainly owe one to the prisoner; a duty to scan, to investigate, to pause, and deliberate on the facts of the case; and if, in the result, you feel any doubt which you can reconcile to your hearts and to that sacred obligation, give the prisoner the benefit of these doubts, and acquit him; if, on the other hand, you shall feel yourselves utterly incapable of assigning any other reasons for the conduct, and for the acts of these unfortunate men, than those to which I have referred them; if you think the reasoning I have urged be not altogether fallacious, if you think it not destitute of foundation, if you think it deserves attention, whatever may be the consequences, you will feel it your bounden duty, with firmness and with decision, to decide according to the evidence; and if you should think that you can decide in that manner, and in that manner alone, you have no right to look to ulterior consequences. You cannot do it consistently with the due discharge of your duty; but if feeling, as I am sure you will feel, because no man can feel otherwise, in or out of your situation, that a good character ought to stand a man in stead, upon an occasion like this,—if you think that that character which he has, I am sorry to say, done things which I think at least put it in jeopardy,—if you think, in point of fact, that that character, that filial affection, which has characterized, honourably characterized him, for some time, in your judgment, renders him an object of mercy, I can say, confidently say, that those whom I have the honour of representing on this occasion, will cheerfully be the channel of any recommendation you may make, and, as far as can be done, consistently with that duty which they have all this day to perform, urge, and confirm it to the best of their humble efforts

DUMBARTON CASE.

SUMMING UP.

Lord President.—Gentlemen of the Jury—It is now my duty, as the presiding Judge on this occasion, to make such observations in point of law, and upon the evidence, as I think may assist you in your deliberations in coming to a just conclusion upon this case; but before explaining to you the law, allow me to make one general observation upon the circumstances of this case, and I am persuaded you will go along with me, when I say, that whatever may be the issue of this trial, whether favourable or unfavourable to the prisoner at the bar, considering what has appeared in evidence, however little share he may be supposed to have had in these facts, his Majesty's Advocate would have ill discharged his duty, in the circumstances in which this country was lately placed, if he had not brought this case under the consideration of a Jury. Gentlemen, you were told, and justly told, by the Counsel for the prisoner, that the poor man at the bar, be his guilt what it may, more or less, was at least not an active and conspicuous leader in the transactions which have given rise to this discussion; he has stated, that he appears, even at the worst, to have been but a miserable and an obscure follower of others. It is true; but at the same time I must state to you, that if, in point of fact, he be guilty as a follower, he is just as guilty as the leader; because, in the first place, in point of law, in Treason, there are no accessaries; all who are implicated in Treason are guilty of the Treason, whether they be high or low, rich or poor, leaders or followers—that is the undoubted law. And as to the risk of the thing, and as to the danger, your common sense may

tell you, that where the accusation is for levying war, or a conspiracy to levy war, the danger would be small indeed if the leaders did not find followers; a war that was to be levied by leaders only, men calling themselves marshalls, or generals, of a provisional government, or any other names they may take, would be comparatively a very harmless war and a very harmless Treason, if they did not find followers, who, by the strength of their numbers, gave them strength to further their treasonable purpose; and let the guilt of this person be what it will, I desire to warn all who hear me of the danger of following such leaders, even if they are known, even if they are men of prudence, 'who would not lead them,' as it was said, 'into mischief.' I suppose, unnecessary mischief was meant by that, because a leader of Treason is always a leader of mischief. But I wish to impress this upon you, and all who hear me, and I take this opportunity of doing so, that it is a melancholy part of the proceedings which we have heard this day, and in other trials,—it is the most dangerous and afflicting part of these proceedings, that fifty, sixty, or a hundred thousand people were put in a state of idleness and excitation, while half a million in this part of the country, and double the number in other parts of the country, were put into alarm by nameless and concealed villains, infamous cowards, as the Counsel for the prisoner justly designated them; and that this Address, signed by people who dare not put their names to it, calling themselves the members of a Committee of Organization for forming a Provisional Government, should be obeyed with an alacrity from one end of the island to the other, that would not, I am afraid, be given to a Royal Proclamation. Is this to be endured for an instant? I wish it to be understood, that all the followers and abettors of such leaders are traitors, and must be treated as such.—Whether this man be one or not, is another question; but supposing him guilty, he is ten times more so by suffering himself to be the follower of the authors of that anonymous Address, which I cannot speak of with that indignation which came forth in that loyal burst which you heard from the Counsel of the prisoner; and if no other good results from it than a just appreciation of

that burst of loyalty, I shall not lament the time that we have spent in this place.

Gentlemen, I am now to state to you what is the law upon the subject. The law of Treason in this and in every other country, can be found only in the statute-book of that country. Every government, whether it be a despotic monarchy, or a limited one, or a republic, consisting of an aristocracy or a democracy, or a mixed government like America; every country must lay down the allegiance due by the subjects to the government, and prescribe the allegiance looked for; you can look for the law of Treason no where else; it is not like murder, theft, or robbery; it is not to be found in the laws of God, or engraven in the human heart. You can take the law of Treason only from the law of the land in which you sit, as other courts and Juries must from the laws of the country where they sit; for instance, the law of Treason here cannot be tne same as in America, which is a republic. What is Treason there, I know not; but they have a law of Treason of their own, and that must be different from ours; therefore, what is Treason you can take only from the law of the land, as laid down by statutes, and settled by the interpretation of the Judges of the land.

We are agreed on all hands that the basis of the law of Treason is the statute of Edward the Third, which declares it to be Treason to compass or imagine the death of the King; secondly, to levy war against the King within his realm—these are the two Treasons laid down by the statute of Edward the Third; but it is added, "if a person shall thereof be provably attainted of open deed by persons of his condition." Now, this must apply chiefly to the compassing and imagining the death of the King, because, as to the actual levying war, it is an open act and deed of itself; and if he is proved to have levied war, he is proved to have been guilty of that Treason.

Gentlemen, I shall not trouble you on this first branch of the statute, because it does not appear to be that which chiefly touches this case, in so far as it is a case; the only thing that I think it necessary to mention to you, is to explain

the principle, and to take away from your minds that supposed mystery, and possibly that supposed severity, which you may think attaches to this crime of compassing and imagining the death of the King.

In other cases of death intended to any other persons, however criminal and murderous the intention of the party may be; however clearly and determinedly he may have evinced an intention to put another to death, even in the most horrible and cruel manner; yet he cannot be indicted or convicted of murder, unless he has, in fact, actually killed him, and death ensues. But with regard to the life of the King, the case is different; it is made different by positive statute, and it has been wisely made so on this principle, that the life of the King is of infinitely greater importance; and his death may be attended with infinitely greater consequences, than the death of any other person in the state can be; and therefore the law has declared, that not only the killing him shall be Treason, but the compassing and imagining his death shall be Treason, provided it has been manifested by something done in furtherance of it. Certainly the letter of the law, in that respect, goes further than it does with regard to compassing the death of any other man; but still it is but a branch of the same law, and the same principle of criminal jurisprudence which regulates the attempts against the life of another man; for a man who attempts the life of another is not convicted, merely because he killed the person, unless it be proved he *intended* to kill him; because, although he killed him, if it is proved it was done by accident, or in self-defence, or on gross provocation, it will be either no crime at all, or a crime of a lighter denomination than murder, as manslaughter, or culpable homicide. It is, however, in that case, the criminal intention which is looked to, and it is the criminal intention alone which is punished; and though a man has not killed another, if he has wounded him severely, he would be punished for the intention; therefore the law which says, it shall be Treason to compass and imagine the death of the King, is bottomed on the same foundation, with all other parts of criminal jurisprudence; to wit, that it is the criminal intention that is to be

punished, and not the mere fact, which may be innocent, or not, according to the intention with which it has been committed.

Now, Gentlemen, that being the law with regard to compassing and imagining the death of the King; the question is, What acts are to indicate such intention, and such criminal purpose? And there it is impossible for the law to lay down any thing; because, when a man has any purpose in his heart, he may indicate that purpose in ten thousand ways; it depends upon the circumstances in which he is placed; the nature of the fact he is going to commit, and the ways and means by which he means to commit it. It is impossible, therefore, to lay down any rules to say, what is a compassing the death of the King? that is a question for the Jury; all that I think it necessary to state to you is this, that although all our law books agree that, under the statute of Edward III., a mere conspiracy to levy war is not Treason under that statute against a levying of war, because a conspiracy to levy war is not an actual levying of war; yet still that the proof of a conspiracy to levy war may be stated, and may be proved, and if proved, will be an overt act to prove a compassing and imagining the death of the King; and that for the reason stated by the Counsel on both sides, that it is impossible to suppose that any human being in his senses can conspire to levy war against the King, without hoping he shall be successful, and if he succeeds in that conspiracy, the consequence must inevitably be dangerous to the King's life.

But, Gentlemen, the only Treason which you have to consider here, under the statute of Edward III., is levying war against the King within his realm; but upon that I shall say nothing at present, because it is not pretended that in this case (whatever may have taken place in other parts of the country, with which you have nothing to do,) there was any actual levying of war; there was no actual insurrection, and therefore I need not say more upon that subject; but, as I before stated, that as Treason is to be found only, and must be created by the statutes of the land; so the legislature have a right either to take from, or add to that statute

of Edward III. if they shall think proper. It has been characterized as a wise statute, and a humane statute, and it is so, and the legislature may narrow it, and make it still more humane than it is; but, on the other hand, if any alteration of the circumstances of the country, the safety of the state, the safety of the King, the peace and good order of society, and the safety of all the peaceable inhabitants, should require that a more severe law should be enacted,—I presume you loyal British subjects will not dispute that the legislature has a right to extend it, and make it more strict than it is originally in its native words; and, accordingly, with that view the statute of the 36th of our late most gracious Sovereign was passed; it was only a temporary act, occasioned by an atrocious attempt on the King's life; but it has been rendered perpetual by the act of the 57th of the late King. It may be repealed by another Parliament if they think it not necessary; but, in the meantime, it is the standing law of the land with regard to the life of the King. The statute of Edward III. merely says, "It shall be Treason to compass the death of the King;" the 36th of the late King says, "It shall be Treason to compass, or imagine, invent, devise, or intend death or destruction, maim or wounding, or any other bodily harm to the King;" and the second clause is, "That it shall be Treason to compass or imagine, invent, devise, or intend to levy war against the King, with a view to compel him to change his measures and counsels, or to constrain or overawe both or either House of Parliament." That statute declares, that it shall be Treason to compass, imagine, invent, devise, or intend to levy war against the King, provided the object be to compel him to change his measures and counsels, or to constrain or overawe both or either House of Parliament: "Therefore you have now a law which says, that a mere conspiracy to levy war is Treason, a substantive Treason, instead of its being a constructive Treason, applicable to the compassing and imagining the King's death; a mere conspiracy, that is to say, a compassing, or imagining, inventing, devising, or intending to levy war against the King is Treason, provided it be to compel the King to change his

measures and counsels, or to constrain or overawe both or either House of Parliament." That is the law of the land, which you are not bound to take from me alone, but you must take it, because it is the statute law of the land, enacted by the legislature whom you are bound to obey.

Therefore, Gentlemen, the only question is, as to another branch of the law, what shall be considered as a levying of war in the sense both of this statute, and of the statute of Edward III.; the actual levying of war under the one, and the compassing, imagining, and inventing it under the other, is declared to be Treason; that is, in the eye of the law, a levying of war; and there I state it to you as laid down by all our authorities, as ruled by innumerable judgments of court, and confirmed by verdicts of Juries; that in order to constitute a levying of war, it is not necessary, in the first place, that there should be a formal, well-disciplined, well-organized, and well-armed army marching in divisions, and brigades, and battalions, and so forth, with all the pomp, the circumstance, and array of a regular army; and it would be utterly absurd and inconsistent, not only with the law, but inconsistent with the common sense of mankind, to suppose it to be so; for in civil war it is impossible to suppose it should at first have any such feature. It must begin in an irregular form at first. I will take the case of a more regular war than we have seen in this country of late times, I mean the rebellion of 1745, by a Prince claiming the throne; but was it in its commencement a bit better than this insurrection would have been? what more was it than his putting himself at the head of two or three score naked Highlanders, in an obscure part of the Highlands? Now, is there any man who thinks they were not just as much guilty of Treason the first instant he collected them together, as they were at any moment of their progress from Fort William to Preston Pans? Therefore, it is not the numbers and force, or the discipline of the insurgents, which constitutes Treason; it is their actual rising to accomplish by force a public general purpose, whether it be actually to depose the King, or to alter the form of the Government; and, accordingly, the law has

said, that every rising, and insurrection for a public general purpose, not confined to the private views and intents of the persons concerned, is a levying of war; and an instance was given of it, which I shall explain to you, and I hope entirely to your satisfaction, not to be so extraordinary, and so devoid of principle, as my learned Friends for the prisoner; and even the great Lord Hale seems to have thought it. Lord Hale was a great lawyer and a great man, but he does not seem to have examined sufficiently the principles on which that part of the law is founded. It is stated, that an insurrection to throw down all enclosures is a levying of war, and that is stated as a strained and forced construction, and Lord Hale says, as it is established, we will not discard it; but he doubts the principle of it. I have no doubt of the principle of it, and I think you will have no doubt of the principle, when I have stated it. By the law of this country every man has a right to enclose his ground; it is a part of his rights or liberties; either his own grounds, which were originally his own, or the share of any common which may be allotted to him by the law of the land. The law gives him that right, and therefore, for any persons to rise in arms to pull down all enclosures, so lawfully made, is a usurpation of the Sovereign legislative authority; it is taking upon themselves to do what the legislature alone, the King being a part of it, can legally and constitutionally do. No doubt, if the legislature thought proper, they could say, you shall not enclose your lands, or but a part of your lands; or if you get a share of a common, you shall not enclose it, but allow it at certain periods to belong to the people whobefore enjoyed it; if they choose to say so, they have a right to do it. But if the people take arms to prevent your doing what by law you have a right to do, or to tear it down afterwards; to call that Treason, is not so devoid of reason as was imagined, because it is an attempt to do by force of arms, what can lawfully be done only by the legislature of the country; it is au surpation against the King and the authority of Parliament, and therefore it is Treason; and so the law is, with respect to all insurrections for a general

purpose; to pull down Catholic meeting-houses, or Presbyterian, or Episcopal meeting-houses; to do that which some think the legislature ought to do; but if there is to be any restriction, it can be done only by the legislative authority. If people by force shall take the law of toleration into their hands, and say there shall be no Catholics here, and no Presbyterians there, and no Episcopalians in a third place; that is a public object, and ought, on principle, to be considered as Treason; but *multo magis* if the purpose be to effectuate a reformation in the government; to compel the King to change his measures and counsels; to redress grievances, real or imaginary; for the grievances of the people, real or imaginary, are not to be redressed by themselves. Are they to be the judges of it? Not so; they may take it to be a great grievance that you have a house, and they have not; that you have a better coat than they have; that you have a better fortune than they have; that you have been more successful, by your industry, than they have;—But are they to redress grievances of that kind, real or imaginary, whether they relate to property or rights? The law and the Constitution under which we live; the law, handed down from generation to generation, has vested the right of redressing them in the legislature; and therefore any rising to accomplish a redress of such grievances, is a levying of war; and a compassing, or imagining, inventing, devising, or intending to levy war against the King, with a view to compel him to change his measures and counsels, or to constrain, or overawe both or either House of Parliament, is Treason, under the statute of the 36th George III. That is the undoubted law of the land; and therefore, Gentlemen, without going further, I shall now apply myself to the facts of this case.

In the first place, let me call your attention to the general aspect of the case, as I conceive it, upon the part both of the Crown and of the prisoner. The case here does not seem to me to be a case of any private conspiracy, in which the prisoner at the bar was concerned; there is no evidence of it; there is no charge of it; but there is evidence before you of a great, and dangerous, and treasonable con-

spiracy, by some persons unknown; the evidence of which is that most detestable and treasonable Proclamation, which was issued by those unknown persons, under the name of a Committee of Organization for forming a Provisional Government. Now, Gentlemen, if there had existed, if there had been proved to you, a private conspiracy, by a certain number of persons, whether taking a particular name of society or not, that does not signify; but if there had been proved to you the existence of a conspiracy of certain persons to levy war against the King, for the purpose of effecting a change in the Constitution, and compelling him to alter his measures and counsels; if there had been such conspiracy proved, then not only the original members of the conspiracy, but all who acted in obedience to those conspirators; all who acted in the furtherance of their measures, provided they knew what they were about, were accessaries to the Treason; in other words, they were guilty of Treason. I repeat again, if there had been a private conspiracy proved before you, for any such treasonable purpose, then not only all the original members of that conspiracy, but all persons who lent themselves to the furtherance of their object, would be guilty of Treason also.

Now, Gentlemen if that would be the case with regard to a private conspiracy, the law is precisely the same with regard to this open, public, and avowed conspiracy, thus carried on by nameless persons. The conspiracy has been disclosed to you of these nameless persons, by the Address and Proclamation which they issued; and all persons who knowingly lent themselves to further the object of that treasonable Address and Proclamation, and acted under it, are as guilty of the Treason in law, as those who secretly framed it. No doubt we must all feel in our own minds, that the one are infinitely more guilty, in point of morality, than the other; infinitely more guilty in the eye of God, inasmuch as those secret agitators were the cause of the crime of others; but in the eye of the law, (the law of Treason) the man who acts under such a public avowed proclamation, is guilty of Treason as much as he who composed it, and put it forth.

Then, Gentlemen, it is for you to consider whether the prisoner at the bar, and those with whom he has been associated, be proved, or not, to have acted in the furtherance of that treasonable Proclamation. What the Proclamation is, I need not state to you; it is given verbatim in the indictment; and that indictment you will have a copy of for your consideration.

Now, Gentlemen, that Proclamation does two things; it calls upon the masters of public works, and all others—mark the words—upon the proprietors of public works, and *all others*, to stop those works, and shut them up. I do not know what the meaning of that is; it calls upon the proprietors of all public works, and *all others*, (that is, private manufactories, I suppose) to stop them, and shut them up; and it calls upon the people to take up arms for the recovery of their rights; these are the exact words you will see from the paper itself. Now, therefore, Gentlemen, this was the object of this secret conspiracy, and this is what they take upon themselves, from behind that obscurity under which they have sheltered themselves, to recommend and to order the people of different descriptions to do. Therefore, I say, that all persons, when they act in the furtherance of that Proclamation, are just as much guilty of that Treason, as if they had acted under a set of open, avowed, and known conspirators, who had the same object in view. Let us suppose that this Committee of Organization were known, and that they had been convicted of it; that there were five or six people, A. B. C. D. and so forth; nay, that they had put their names to the Proclamation; surely the guilt of those who followed that Proclamation is not made a bit better, or a bit worse, or a bit less, whether the names of the authors are put to it, or not. It is only a more melancholy, and a more fatal picture of the times, that persons should be deluded to act under the addresses of persons seeking for personal aggrandizement to themselves, and who thought no more of the liberties and rights of the people, than I do for the rights and liberties of the people of Turkey; and therefore it makes no difference, whether it is an anonymous Proclamation, or a Proclamation with a parcel of names attached to it.

Then, Gentlemen, it calls upon the proprietors to shut up their works. But there is no explicit call upon workmen to strike. Yes, I believe there is, not to return to their work, till they have accomplished their purpose. "We earnestly request all to desist from their labour, from this day, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to re-commence, until he is in possession of those rights which distinguishes the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed," is one of the last paragraphs of the paper; therefore there is not only a recommendation of the proprietors to shut up their works, but a call on the people to stop work, and not to re-commence work, till they have accomplished their purpose—that is the call.

Now, you see, that was obeyed—obeyed by the whole people of this work, and by Robert Munroe, among the rest; he lent himself to the furtherance of that Proclamation; he obeyed it just as faithfully as if it had been an act of Parliament, or a Proclamation from the King, declaring after such and such a day, such and such works should be unlawful, and should cease; about that there is no dispute; the evidence is quite immaculate upon that. It is admitted he stopped work, and all his confederates; but the excuse is, that they did it from fear, and from terror. Now, Gentlemen, before going to that, let me say a word as to what fell from the Counsel for the prisoner—that from the beginning of time to the present moment, the striking of work was never considered as an overt act of Treason. I have already stated to you, that it is impossible to define what shall be an overt act of Treason; it is not necessary it should be Treason, because then it would be Treason itself; it would not be an act to prove a treasonable intention in the mind. In the charge of levying war, there is no overt act alleged, because that is Treason; therefore it is not necessary that an overt act should be itself Treason. Suppose that a conspiracy to levy war was proved to exist, and the only question is, what shall be considered an overt act of it? Now, Gentlemen, I state to you as I have stated to other juries

before, that nothing can be more innocent than the ringing a bell, or the firing a sky-rocket, or the beating of a drum, in themselves; but if it had been part of a conspiracy to levy war, that one or other of these things should be the signal for insurrection; and that any one man, knowing of such conspiracy, and knowing such to be the intended signal of insurrection, should so ring a bell; should fire a sky-rocket; or should beat a drum, to make the people rise, these are overt acts of Treason. That is not only law, but I am persuaded you will see it to be common sense; for if there are to be signals, and they can get no person to give the signal, the rising will not take place; so that the persons who give the signals are guilty of the most dangerous part of the Treason, because they are guilty of the executive part of the Treason—that act alone which could bring the Treason into action; for if the signal is not made, the Treason will not take place. In the same way, striking work is not Treason. Most unquestionably it is an unlawful act to strike work for a rise of wages, and to insist on larger wages, and stop the works; but it is not Treason. But if it be done in furtherance of a treasonable purpose, it is as much an overt act of Treason as any other which can possibly be imagined. It is the means pointed out to further their object. Those very ruffians who sent forth this Proclamation, named, or nameless, had pointed out the striking work as the very means to accomplish their purpose, and yet we are told that the persons are not guilty of an act of Treason—that cannot be the law. An act perfectly innocent in itself may become treasonable, if it is done with a treasonable purpose and view.

Now, Gentlemen, having disposed of that, I come to detail to you the evidence from which you are to consider whether this prisoner at the bar be implicated in these treasonable purposes, or not; that there has been plenty of Treason committed somewhere, I presume you will have no doubt of; but whether the prisoner at the bar has been guilty of Treason, is a very different conclusion.

Gentlemen, it is my duty, not knowing at what length you may have taken notes, to endeavour to relieve you from

the opposite statements of the Counsel, on both sides; it is my duty to state the evidence minutely, to bring it to your recollection, that you may the better judge whether the prisoner is guilty of Treason, or not; and as I go along, I shall make such observations as occur to me on the evidence; but premising they are merely those which occur to my mind, and are not necessary to be embraced by you, except as they concur with your opinions. It is for you to draw the inference from the facts, not me. I will tell you the inferences I draw; and you will say whether you agree with them, and no more. I have always thought it my duty to make observations to juries, because the bulk of jurymen are little accustomed to consider and draw the inferences which the evidence naturally suggests.

The first evidence is that of John Bullock. But here allow me, before I go farther, to make one observation applicable to a great deal of the evidence here, and I do it in consequence of what fell from the Counsel for the Crown. He stated to you a great deal about the witnesses not having told the whole truth—witnesses for the Crown itself. He told you that you might infer a great deal more than you have heard said; perhaps you might; but you are not entitled to do so; you are to judge this man by what is proved, and not by what might have been proved, if these witnesses had chosen to speak more out, or if other witnesses had been brought on the subject. That is most undoubted; the Crown Counsel are not entitled to tell you, "You are to infer this might have been proved, and that this witness might have told you more." You cannot tell what he would have said; you are to judge by what they have said, and no more.

Now, John Bullock, junior, is the first witness, and he says, "that he lives at Duntochar; that his father is a mill-"er, and has a mill there; and he lives with his father"—I think somebody called him a distiller in the course of his evidence—"that there is a forge immediately adjoining to "the mill; that it is separated from it by a wall; that the "wall is stone, up to the level of the second floor; and above "that it is a wooden partition; that he could see through "between the wall and the wooden partition; that in the forge

"there are two large hammers, worked by water; that the "forge belongs to Mr Edington; the hammers move very "rapidly." Another witness told you, one fifty-six, and the other sixty strokes, in a minute. "That there is a finishing-"shop belonging to the forge; that he was at home the be-"ginning of April, and went to the corn-mill about ten "o'clock in the morning; it was on the first Monday in "April; he saw the forge at work; Mr Robertson of the "excise went along with him, and the miller, John M'Do-"nald; that he looked, soon after going to the mill, over in-"to the forge." Now, Gentlemen, it was not asked of him, and he did not tell you, and we have no business to conjecture, what made him look into this forge more on that day than another. The working of that forge was every day's work; and therefore what drew his attention to it that morning, we cannot tell. "That he looked into the forge, "through the opening, and saw the forge going, and a num-"ber of people in the forge; that he saw Patrick M'Devitt "at work; he was holding a something before the hammer, "and people carrying things to him like old files; they were "flattening them; the piece of iron placed under the ham-"mer was red hot; when the file wa beat flat, it was laid "upon the floor; he cannot say whether they were all left "lying upon the floor; that he saw at least six; and there "were above twenty people in the forge, boys and all; that "he thinks there were six or seven boys, and about four-"teen grown persons; some were walking, and some stand-"ing still; that he saw some of them going from the forge "to the finishing-shop; they were carrying the flattened "files, that was after they were flattened and cold, to the "furnace door, leading to the highway. The finishing-"shop door adjoins the furnace; but he could not see it, or "get to it, without going into the highway from the fur-"nace; that among the persons there, he knew Patrick "M'Devitt, Robert Munroe, (that is the prisoner,) Wil-"liam Rownie, Robert M'Kinlay, Lowrie, whose first name "he does not know, and George Munroe." Now, Gentlemen, if you suppose, and hold, as I presume you can have little doubt, that the people who were so manufactu-

ring arms, were manufacturing them in furtherance of that treasonable Proclamation which had been posted up the night before about the works—then the persons so employed were guilty of Treason; they were guilty of manufacturing the arms for that treasonable purpose; but, Gentlemen, it is for you to consider, whether, in the rank of life in which Robert Munroe was—whether a man actuated by that idle curiosity to which people in his rank of life are subject, might not have gone in, and seen what was going on without participating in the purpose. In strict law, perhaps, I should say, that no persons could be present where an obviously treasonable purpose was going on, without being partakers of the Treason; but, in point of fact, the intention of it you are to judge of unquestionably; no doubt it may be—(there were even here a parcel of boys, perhaps not of an age to commit Treason, who were present)—it may be a possible fact, that, in point of intention, this poor man may have seen people at work, and have gone in to see what they were about, to see what they were doing; and he may have staid longer than he ought to have done; and thereby have given support and confidence to what they were doing in his presence; but, in point of intention, most unquestionably he might have gone, as this witness Bullock did, who looked through the hole; this man may have gone into the house to see what they were doing, and, in point of intention, he may not have been participating in the treasonable purpose; and whether he was so, or not, it is your province to judge. The witness says, "that he has known "the prisoner, and was at school with him"—and so on; "that the prisoner is employed at Mr Dunn's cotton works "as a spinner; that they were standing before the furnace; "that he saw one of them." I have not taken down that it was one of the Munroes; but I think others took it down, that it was one of the Munroes. But suppose it was one of the Munroes, that does not shew it was the prisoner; you are bound, in point of doubt, to presume it was not the prisoner; because if it was one of the Munroes that he saw take up something, you are bound to presume it was George Munroe, and Robert Munroe is no farther implicated,

than as you suppose him to be implicated by his presence upon the occasion. He could not see exactly what it was that he lifted either, but it was something within two feet of the flattened files on the floor; and therefore you may infer it was not one of those files, if you think it a fair inference; it was in bad company; but you may draw that inference, if you think it a fair inference. "That M'Devitt was at "work at the forge, with nothing but his trowsers and shirt "on, and his sleeves tucked up; that he saw Rownie stand-"ing by the hammer; he was laying something up to what "they were making, like as if he was measuring it;" that is, measuring the length to which the files should be drawn out, I suppose; but that was Rownie. "That M'Devitt appear-"ed to be working without constraint;" that was M'Devitt; that has nothing to do with the prisoner, except that it proves the prisoner put no restraint upon M'Devitt; it might show that M'Devitt did not act under constraint, but at present all you have is, that nobody acted with restraint against M'Devitt; therefore M'Devitt was not acting as an unwilling servant of Robert Munroe. "That he staid in the "mill from eight to ten minutes; he looked twice through "the opening, and the same operations were going on both "times;" then he says, "that the things he saw were of the "same shape and length as the pike heads now lying on the "table." And you know, Gentlemen, that a file hammered out by a great hammer like that, will assume the appearance of one of those things on the table; but perhaps it would not be so polished or sharpened as this. "That he "returned about twelve o'clock, and looked into the forge "again; the hammer was still going, and M'Devitt was "still employed there; that some of the people were the "same, but he would not say whether Lowrie and the Mun-"roes were there the first or the second time; on one oc-"casion he saw Robert, one of the regular forgemen, stand-"ing with his hands in his pocket." That goes only to prove that other people had taken possession of his forge; and he had nothing to do, and he was looking on. "That "there was a small grindstone at the back of the forge, and "a door opened to it; that he saw the people at the grind-

"stone between the two times of looking at them; that is, "between ten and twelve, he was going by, and saw them; "that some persons were moving the grindstone, and others "applying things to it, but he could not say what; that he "was forty or fifty yards from it; there were about eight "people round it; he was at the malt kiln after that, and "he saw them again; this was about twenty minutes after "the first time—he was near at hand—they were employ-"ed in the same way as before; there is a window in the "kiln, about twenty yards from the grindstone; that he "looked out of that window the second time, and saw the "same number of people employed; that he did not know "any of them on either occasion; but he saw the prisoner "at the grindstone the day following, that is, upon the Tues-"day." But then what was he doing? Only grinding a chisel iron, or, as he afterwards expressed it, the iron of a plane. But this witness swears he knew none of them who were there on the Monday; so that whatever they were doing, the prisoner at the bar was not there on the Monday; and the only time he saw him at the grindstone, was on the Tuesday, and the thing he was then grinding was the iron of a plane, and not a pike; on that he is positive, and I cannot allow the Counsel for the Crown to make any insinuations, or to tell you that their own witness chose to substitute the iron of a plane, instead of the iron of a pike; that will not do; you must take the evidence as it stands—he says it was nothing but the iron of a plane, which has a square end, and the object is to grind it to a square flat, and not a point; therefore, if this man speaks the truth, he was employed most innocently in grinding the iron of a plane for himself, or some other person. "That at this time there "were none but boys, except the two Munroes; that one "of the Munroes was sharpening the chisel, and the other "was turning the grindstone;" and that certainly is very natural. Then he says, "it was a plane iron, and that he "mistook, and called it by mistake a mason's chisel. On "Sunday the 1st of April, he saw a paper posted up at the "end of James Bryson's house; he heard some people read-"ing it, but does not remember any of it, except that every

"public work was to stop; he never read the Address, "or any part of it; and does not know by whom it pur-"ported to be given out. All the public cotton-works in "his neighbourhood struck work the next day; a great "number of strangers were about the place, and great "alarm was among the people; he went to Glasgow on "Tuesday morning at ten o'clock; the forge was going on "the Monday, and on the Tuesday, when he left; he re-"turned from Glasgow in the afternoon; it was not going "then, nor on the Wednesday; when it was going on the "Tuesday, he does not know whether it was worked by "strangers, or by the regular workmen."

On his cross-examination, he says, "He is a distiller; "that the distillery did not stop; that he intended to work "at the distillery till he was stopped, as it was reported "they were to be stopped, but nobody attempted to do so. "The hammer was not thirty yards from where he was "standing." On his re-examination, he says, "it was as "far as from one end to the other end of the church."

Now, Gentlemen, upon this evidence I have only to repeat to you, that there is nothing comes out against the prisoner, except his presence at this forge when they were manufacturing some things, which turn out to be pikes; and it is for you to say what inference you will draw from that naked appearance there; a man of prudence would have withdrawn from what he saw could have been nothing else but a treasonable purpose—a man of prudence and loyalty ought to have done so; but whether you ought from that to draw the conclusion that he was an accessary to the Treason, is for you, upon your oath, to determine.

The next witness is Andrew Robertson. "He is an ex-"cise-officer, and was stationed at Duntochar in April last: "That it was his duty to survey the distillery belonging to "John Bullock; he was there in the beginning of April; "there is a forge in the neighbourhood, belonging to Mr "Edington: That he was there, he thinks, the first Mon-"day in April—the fore part of the day after breakfast; "he went into a mill adjoining the forge; he saw through "a hole in the top of the wall, and saw them making what

"they were calling pikes—long pieces of iron, about a do-
"zen or fourteen inches long, about the same in size and
"appearance as the pike-heads now on the table. That he
"saw one man working at the pikes, and some boys carry-
"ing iron backwards and forwards between him and the
"fire—the man was holding them below the hammer:
"That he was not there more than three or four minutes;
"that M'Devitt was the name of the man at the hammer;
"that Rownie was standing by; that M'Devitt appeared
"to be in his shirt-sleeves. He went with John Bullock
"the younger: That there were about half a dozen things
"that they were working at; Bullock looked through the
"hole too; that he left Bullock there, and that he did not
"go back again: That there is a grindstone near; that
"that he was in sight of it; that some people were about
"the stone—this was an hour or two after he was at the
"mill; the people about the stone were grinding pieces of
"iron apparently—the same kind of things that he saw at
"the forge." Bullock tells you he could not see what they were grinding at the grindstone; but this man tells you distinctly that they were grinding the same sort of things that he had seen at the hammer. That there were four or five people, but he did not know them; if he did not know them, it is no evidence against Robert Munroe. "That
"Thomas Graham, one of Mr Bullock's workmen, John
"Bullock the younger, and Lang, were all that were with
"him; he distinctly saw the pikes; he did not stand above a
"minute or two there. After that day he did not go there
"again—this was upon the Monday; there is a corn-mill
"near that place, but he was not within the mill-door either
"on the Tuesday or Wednesday."

On his cross-examination, he says, "the grinding at the
"stone was of the things he saw at the forge, to appearance;
"he was about forty or fifty yards from the grindstone; he
"could see what the people were doing very distinctly." Now, therefore, the result of his examination is not in any shape to implicate Munroe in the grinding these pikes; this man does not say that he knew him, nor did he point him out; although he did not know him then, he might have recog-

nized Munroe again; though he did not know him at the time, he might have recognized him to be one of the persons he did see, but no such question was put to *him*; and therefore, in point of fact, those people must be taken to have been persons of whom Robert Munroe was not one.

The next witness is John Andrews, a carter, at Duntochar. He says, "that he was at Bullock's corn-mill, at Dun-"tochar, in the beginning of April last—the first Monday "in April, he thinks, about ten or eleven o'clock; that he "goes there repeatedly for dust and meal for his hogs; af-"ter he went to the mill the forge was going; when he "went, young Bullock, and the miller M'Donald, were "there; he thinks Robertson came in after him; he look-"ed into the forge at a little hole between the forge and "the mill; he heard a noise; that they were making some-"thing, and he was anxious to see what it was." Therefore, you see, Gentlemen, that there was that curiosity among that description of people to see what was doing. Bullock said, those people who looked through the wall had to take a secure station, so as not to implicate themselves, *though*, by the by, they were implicated, for it was misprision of Treason if it was Treason to make the pikes; but still they came there from curiosity to see, and whether the same curiosity might not have led a man to look into the forge to see what was going on, you will determine. He says, "that "he saw different ones in the forge—a few that he had seen "before; he saw M'Devitt that works at the forge, Low-"rie the Irishman, M'Kinlay, and several others that he "could not name; the forge was going, and M'Devitt was "turning in something below the hammer about a foot "long, and from an inch and a half to two inches broad, "something like the things shewn to him, but not polished; "M'Devitt had his coat off." He says, "that he had a "a sore leg, and could not look in long at once; he look-"ed twice, and they were going on with much about the "same operation; he saw some of the things on the floor, "between the forge and the furnace; he does not know the "number of the people that were there—there were two or "three boys among them; the length of the forge is about

"fifty or sixty feet, or more—it is longer than this church." Now, Gentlemen, here also there is nothing to implicate Munroe, not even by presence; this man does not even swear that he saw him; but there is other evidence that he was present, and therefore that is of very little consequence; but this witness does not implicate the prisoner Munroe in the smallest degree.

The next witness was disposed of as being wrongly described.

Then you come to John M'Donald. I believe that is the miller. "That he was employed in the beginning of last "April at Mr Bullock's mill; that he knows Mr Edington's "forge; that on the first Monday in April he was inside "the mill, which is close to the wall of the forge; that "about eleven o'clock he looked through the side wall of "the mill—that the furnace is at the west end, distant "forty or fifty yards from the place where he was; he saw "from ten to fifteen people collected in the forge—Paddy "M'Devitt was working at the hammer—he was holding "some iron below it; the hammer is worked by water—it "is not a very large hammer—it weighs perhaps a hundred "and a half." There he has mistaken the weight, the owner of the mill swears it was a great deal heavier, but that is nothing to the purpose. "That he saw M'Devitt "holding two or three pieces of iron below the hammer—"he could not see the face of the hammer, but saw the man "working at it—they were long small pieces of iron, re-"sembling old files. Then he says positively, that they "were old files—there were people carrying the files taken "from the furnace to the hammer; that there were a good "many people employed in carrying the files from the fur-"nace to the hammer. M'Devitt held them down under "the hammer, and they were flattened, and then laid down "upon the floor—he observed this about five or ten mi-"nutes—that they were flattened very quick." That you may easily conceive from the weight of the hammer and the rapidity with which it moved; so that a great number could be made in a short time, especially by M'Devitt, who was a forger. "As soon as one was flattened, M'Devitt

"received another—he received two or three. M'Devitt "was not fully dressed at the time; the persons in the forge "were all strangers to him except Rownie; that he looked "in only once that day. There is another shop belonging "to the forge, called the spade-finishing shop—that is "where the shovels are finished off; there is a grinding-"stone behind that shop—he did not see the grinding-"stone on the Monday, nor on Tuesday, nor Wednesday: "That he knows William Blair, and saw him in the finish-"ing-shop." And that is the amount of his evidence, which leaves the case of the prisoner where it was, standing on the evidence of Bullock, who saw him in the forge.

Then you have the evidence of James M'Ilquhan. "That "he was working at Faifley paper-mill, and gave over "working on Monday the 3d of April last; that he went "to the mill with a view to begin work that morning; "that there are seven or eight working men at the mill; "that he has been an apprentice these five years; that he "went to work between six and seven, and gave over in "about twenty minutes; he does not think there were any "working after he left off, except the master and the fore-"man; that he returned to work, he thinks, on the Friday "afterwards." From other evidence, probably he is mistaken, but that is of no consequence.

Mr Hope.—That is the paper-makers.

Lord President.—Oh, exactly; he returned on the Friday; the foremen were idle doing nothing during the Monday, Tuesday, Wednesday, or Thursday. "That Faifley "is a small village; that he saw a paper posted up at the "end of James Bryson's house—a public house; that he "never saw any papers put up against that house before "—he read pieces of it; that he saw another paper in a "man's hand, and read it; that he first saw the paper on "Bryson's house on the Sunday morning, between seven "and eight; that there were several people reading it, but "none of the persons now present; that he has forgot every "part of the paper; then he says, that it was an Address "to the Inhabitants of Great Britain and Ireland, and di-"rected that all the works were to be stopped; that he left

"off work because the rest did; that he did not tell his "master or his foreman that he was going to leave work "that morning, nor did they tell him to work or not; that "he knows Duntochar forge; that he went to that forge on "Monday between one and two o'clock with Daniel M'Dou-"gal, to see what was going on." Here, then, you have another evidence of that curiosity; for you must take it to be curiosity. I cannot take it from the Crown that this witness was a traitor, and knew what they were about. He tells you expressly, "he went to see what was going on; "he heard something uncommon was going on, and he "went to see what was going on; that he saw some men "going through the forge, (that is a Scots phrase for go-"ing backwards and forwards inside the forge;) that he "saw some people working with a small hand-hammer— "that it appears afterwards to be in the adjoining shop; "that the forge was not then going; that William Blair was "then beating some heated old iron into long small things." Then he is shewn two pike-heads, and he says, "that they "resembled them; that there were between nine and ten "people; that he did not know any of their names except "Blair and M'Devitt, and he was beating old iron too; that "Blair is a cotton-spinner." We are not on the trial of Blair, otherwise this would be a strong thing against Blair —that he was going out of his own work, to be hammering iron in the shape of pikes—but we are not upon the trial of Blair. "That he staid there half an hour; that Blair "and M'Devitt went away before him. He cannot say "whether they made more than one of those things or not "—that it appeared to be old steel. That some had some-"thing like pikes in their hands—three or four of them "had pikes, and he got an old broken piece of iron to grind "which some of them called a pike; that he went to Wil-"liam Clark's grindstone on the Monday between four and "five o'clock; that he went for nothing, and did nothing; "that there were five or six persons there grinding old "iron in the shape of the pike-head that is lying upon the "table, so far he is positive; that the people that were "there were grinding old iron things into the shape of the

" things that are on the table; that there were pike-heads
" he says expressly; that he did not carry his there to be
" ground; that he gave his to James Drummond; that the
" mill at which he works is seven or eight miles from the
" town of Paisley; that he went to Paisley on the Wednes-
" day, and remained there about two hours; that there
" was a good deal of people in the streets—the streets were
" like a fair, but it was not a fair nor a market—there were
" both men and women; that he also saw a number of
" horse soldiers down the town, on the road to Glasgow;
" that he saw Lowrie at the forge on Monday, standing
" still; that Blair and M'Devitt were in the spade-finishing
" shop with their coats off—that he never saw them in the
" forge." Now, all this goes to a great deal of improper practices, and to something that might look like Treason in Blair, but it does not prove any thing against Munroe, who is not proved by this man to have been there at all.

The next is the evidence of James Probert, who says, " That he is the foreman at Mr Edington's forge, at Dun-
" tochar; that it is a very weak forge, and consists of two
" hammers; that the forge is worked by water; that one
" hammer goes about fifty-six blows a minute, and the other
" about sixty; the one is four hundred weight, and the other
" is four hundred weight and a half, and, therefore, a very
" effective instrument to turn files into pikes, in a very short
" time indeed; that the bellows goes by water by itself;
" that there was a rumour of stopping works in the begin-
" ning of April; but he was never interrupted in his work
" there any morning. He recollects on the Monday morn-
" ing he went to his work as usual, but his boy did not come
" forward, and he retired into the house where he went to
" work; there was nobody in the forge but him; that two
" men, whom he did not know, came and asked him for two
" old files; that he did not give them to them, and they
" did not threaten to take them; that he left the shop im-
" mediately after those two men went out; that there were
" no other persons along with those men on the outside.
" He was induced to leave the forge that morning, because
" there was no boy, and his men did not come down from

"Glasgow to begin to work with him; that he locked the "door, and hung up the key in his own house; the people "were in the forge that morning, but he only heard of it "from his wife at first, but he went to the door; he heard "the hammer going before he reached the forge; his wife "insisted on his going down to the forge, and he went "down; that this was better than an hour after he left it; "he did not go inside the forge, but looked in at the door; "that he saw a multitude of people standing; that he did not "see them do any thing; that he saw smoke coming out of "the chimney at this time, which arose from the fire, but "he did not observe whether the bellows were going or "not; that he did not go near it, because they threatened "to take his life; that this was about eleven o'clock; that "it was about seven o'clock in the morning when he first "went to the forge; that he was threatened in the forge-"yard, and he then retired from the forge door; that it was "men who threatened him, but he cannot say the number; "they were both in and out of the forge; they told him if "he went to inform, or did any thing, they would take his "life; that he then went away leaving those persons in the "forge."

Now, Gentlemen, this was about eleven o'clock, and this would be most material against the prisoner, if it were proved, and it were quite certain that this period which this man swears to, corresponded with the time exactly when Bulloch saw him standing in the shop, or if it were quite clear that he remained; because treasonable words, thus uttered in the presence of a number of persons standing on, and countenancing what is going on, though not assisting by their hands, will attach to the whole company, if they conceal it, and do not immediately disclose it. Gentlemen, this is proved to be at eleven o'clock, whereas, upon turning back to Bullock's evidence, I think you will find that the time he swears to is about ten o'clock in the morning.—It struck me, as I went along, that the time did not correspond, and that, therefore, you might draw in your minds an unfavourable inference against the prisoner; that he was not only there when Bullock saw him there, but that he continued

there till eleven o'clock, when this man was threatened by them. Now, Gentlemen, this might or might not have been the case; he might have remained there the whole time; he might have been going and coming; but as this man states that it was eleven o'clock, it strikes me, that in candour, and in that mercy which is always due to a prisoner, you would not be justified in drawing the conclusion, that he did necessarily remain there the whole time, so as to hear this treasonable speech, and these threats. It is not proved that he remained the whole time; he could not hear them if he did not remain, and you can only say he did hear them by an uncharitable inference. "Then," he says, "that when "he left the forge he retired to the house he came out "of; that he went to the forge again between six and seven "in the evening; that there was nobody there then; the "forge was full of people when they threatened him, but he "did not know any of them; they were all strangers to him; "nobody appeared to him to do any thing that day. About "a hundred weight, or a hundred weight and half of files "were sent to the forge, either on the Friday or Saturday, "but cannot say which; that they were all there when he "left the forge on Monday morning; and when he went in "the evening there were a number of broken files, but the "greater part was gone; all but the broken ones were gone "(made use of;) that he sent down to his master on Mon-"day afternoon, to tell him that the steel was gone;" then he says, "that whether the files were taken to the constable, "or where they were gone, he does not know."

The next witness is Joseph Taylor. "He was a spade-"finisher at the Phœnix iron-works at Duntochar, had "worked there ten years, and is well acquainted with the "place; that he was in the spade-finishing shop on the "morning of the first Monday in April last. Three or four "men came into the shop; M'Devitt was the only one that "he knew; they brought in two old files and clapped them "into his fire, and when they were heated, took them out of "the forge; M'Devitt had a couple of files in his hand; when "M'Devitt left the forge he did not look to see where he "went to; a good many more persons came in, and he left

"it, because he saw the men with finished pikes." This man did not choose to be implicated; he went away the moment he saw the nature of the things they were manufacturing; he left them; he would have done better if he had given information, perhaps; but, at least, he was prudent in taking care that he should not be implicated by his presence; that he went away through fear; he saw this was an improper proceeding; he put a proper construction upon it, that the making these pikes was for a treasonable purpose; this was about breakfast-time; this must be somewhere between nine and ten, that is the general breakfast hour at these works; they all went out about breakfast time, and he locked the door and took the key away; he returned after breakfast again, and a great number of persons were about the door of the shop; they told him to open the door, as they wanted fire; that he knew some of them by sight, but did not know the names of them; "then," he says, "he knew them when he saw them again, "but he did not know one of them." This, therefore, does not implicate Robert Munroe; "that he opened his door "from fear; that he saw them take fire out of the shop, and "carry it into the forge. They did not say for what purpose "they wanted that fire, but they were speaking about making "these pikes; that there might be a score of them; some of "them were persons who lived in the neighbourhood, two "that lived at Glenhead, named Munroe; that this was be-"tween nine and ten;" that was after they had carried the fire into the forge, and that is the time spoken to by Bullock. Therefore Bullock's evidence is corroborated, that Munroe and his brother were there at the time this hammering was going on; "that he went home and stopped till about two "o'clock, and then returned to the forge; that then he only "saw some boys; the hammers were then going." But although this witness corroborated Bullock by swearing Munroe was at the forge, he does not swear he was one of the persons that came to his shop, and wanted fire and pikes, and said that they came to make pikes.

On his cross-examination he says, "That he had not "known the prisoner, Robert Munroe, before that morn-

"ing, and he does not now know that it is the same man "that he saw that morning."

Lord Advocate.—I think Munroe was stated to be present, my Lord.

Lord President.—No; "That he saw them take fire out "of the shop, and carry it into the forge; they did not say "for what purpose they wanted that fire, but they were "speaking about making these pikes; that there might be "a score of them, that is, in the forge; some of them were "persons who lived in the neighbourhood, two that lived "at Glenhead, named Munroe." Now, I certainly do not infer from that, that they, the Munroes, were any of the people that had come to him for the fire, but that they were in the forge. The Gentlemen of the Jury will look at their notes; and if I am wrong, they will draw their own inference if it is against the prisoner, as much as if it is in his favour.

The next evidence is Thomas Graham. He says, "That "he is a workman at Duntochar distillery; that he knows "the forge and grinding-stone there; that he saw the grind-"ing-stone on the first Tuesday in April, and a person near "it grinding an old file of the same length, and something "of the same kind, as the pike-head which has been shewn "him; that George Munroe was that person; that he saw "the other Munroe there that day grinding the iron of a "plane;" and so far that corroborates the other man, Bullock; he saw that George was putting water on the stone at the time; that it was the iron of a plane, it was out of the wood; then, he says, "that it was on the Monday that "he saw George grinding the pike, and that at the same "time there were a parcel of boys around him." Now, that certainly is the only thing that brings the prisoner near to the grinding of the pikes; that at the time the prisoner was grinding his plane, George Munroe was grinding a pike; it is hardly possible to suppose the grindstone was used at the same time for both purposes.

Mr Grant.—As I have it down, they are two different days.

Lord Justice Clerk.—I have taken down, that on the Monday George Munroe was at the grindstone grinding an old

file of the same length, and something of the same kind, as the pike-head now lying on the table; that he saw the other Munroe there that day grinding the iron of a plane, and his brother was putting water on the stone; it was on the Monday that he saw George grinding the pike, and at the same time there were a parcel of boys around him.

Mr Grant.—I thought it had been two different days.

Lord President.—No; it was on the same day, but then the act of Robert Munroe was grinding this plane-iron. It was not proved that he was turning it into a pike; it was not asked of this witness; he did not say so; and when he merely says he was grinding a plane-iron, you must, in fairness, conclude that he was grinding it in a common way, merely to sharpen it to be a plane, as a carpenter would do, and not as an instrument of war. But, on the other hand, he was undoubtedly present, and saw his brother George grinding a pike; therefore, he was again present when these warlike and illegal instruments were made.

Then the next witness that is called is John Connel. He says, "That he was employed at Faifley cotton-mill in "April last; that he remembers the cotton-spinners at that "mill stopping work the first Monday in April; he knows "the forge at Duntochar; that he was at the grinding-mill "at Faifley on that day about two o'clock; that there were "there about eight people, some were grinding, and some "were standing on the floor; that he saw them grinding "things that he imagined to be pikes." Then two pike-heads were shewn to him, and he says, "They were some-"thing similar to them; he saw George Munroe there, but "does not know whether he was grinding; there were four "or five others there that he knew by sight, but he did not "know their names. Robert Munroe was in the mill with "something like a pike in his hand; he lifted it off some "things that were in the place, that he and M'Kaffie might "see it;" he does not say that he had a pike in his possession as an instrument of his own, but he merely lifted it up from a place in the mill, that the witness and M'Kaffie might see it. That, Gentlemen, no doubt, was shewing what was very improper; and in strict duty, and in

loyalty, Robert Munroe ought to have informed of what he saw, and so far he was a partaker of what was going on; but on the other hand, he had taken it up, this witness says, to shew to the witness and M'Kaffie not to use it thereafter; nor is it said it was carried away; the prisoner went in with him and left him there.

On his cross-examination he says, "That the spinners "did not work on the Monday at Fairfley mill; that they "had a meeting at the entry going to the mill at eight or "nine o'clock, to consider whether it was safe for them to "work or not; and they thought it would be better to dis-"continue work for a day or two till they saw what came "about; for they were afraid to work till they saw whether "the people would turn out." That is very like Scots caution in matters of Treason; it has been said that they are more willing to see others engage in dangerous operations, than engage in them themselves; but, seriously, that was in reality obeying the proclamation; they struck work as ordered by that proclamation, and so far it was undoubtedly wrong, because it was just furthering the object of the proclamation, doing the very thing which it had in view; and it had this effect, that those people who struck out of fear, were lending their aid by their numbers to the persons who had the treasonable motive; and it led the people to believe, that fifty or a hundred thousand people did strike and submit to this proclamation; and it was most criminal in them, even on the ground of fear; and let me call the attention of these unhappy men, in case they should be acquitted, and go again into the world, and of every one, that the listening to this fear from unknown men, has brought them into ten times more danger than continuing work. The Provost Monteith's works—Kirkman Finlay's works, continued, and others, and not a hair of their heads was touched; and, therefore, I wish to impress it on all not to give way to such groundless alarms; it is time enough to give way when compulsion is used against you. There were strangers going about the place, but they conducted themselves in a peaceable manner; not one of them used threats of any kind against you; not one of them rose against you

to threaten you, or destroy your master's property. It was a groundless alarm, and dearly have you suffered for it, if you suffer no other punishment; you have been subject to a long imprisonment for giving way to a childish fear, that women should have been ashamed of, and, I hope, it will be a caution to you. What authority had these persons over you? How could they use force over you? if you did not strike work yourselfwhowas to compel you?

He says, "That he had heard that there were a number "of people coming round, and that they would take all be-"fore them, and force them to take one side or the other, "and force them to go along with them; that that was the "reason he heard them give for discontinuing work with-"out any man having come to them, or used any force against "them." On this idle and groundless terror they struck work, and lent aid by their numbers, and striking work, which was one of the ends of the conspiracy. It is most lamentable to think any people of this country are to be so led astray; I speak it with utter contempt of them—are men thus to be led by unknown persons? That the sober people of this country who used to be so distinguished for their good sense and education, should be led by their nose like sheep, to commit acts of this kind, it is really melancholy to think of.

On his re-examination he says, "This conversation took "place at nine or ten o'clock in the mill; they had worked "in the morning; that it was in consequence of the paper "posted at the end of James Bryson's house, that they were "afraid; that he saw that paper, and read it; that it was "addressed to the inhabitants of Great Britain, he thinks, "but he could not be positive; that he thinks it ended "something about the soldiers in Spain; that the date of it "was the 1st of April; it stated, that it was put up by or-"der of the Committee of Organization; that there was "something about stopping work in it, but he could not re-"peat it; that he does not remember the substance of it." In short, there cannot be a doubt it was the very Address stated in the indictment; that it recommended to the people to stop work until something about their rights was done;

that he has never seen that paper any where else, nor read it since.

Then William M'Kaffie, William Clark, and John Lowrie, were called; but being wrongly described, they could not be examined.

Then you have Hugh Wilson. He says, "That he be-
"longs to the Glenhead cotton-works, and did so in the
"month of April last; that he was clerk in the Duntochar
"cotton-mill; that they had twenty-eight or twenty-nine
"spinners in the mill at that time; that William Blair,
"William M'Phie, Robert and George Munroe, belonged
"to the mill. That he saw an Address on the Sunday
"morning, posted upon the corner house of the street of
"Glenhead on Friday or Saturday; there was nothing no-
"ticeable among the workmen, except that there was rather
"a little stir among the spinners, principally persons send-
"ing their piecers from one person to another; especially
"John Stewart's piecers, they were frequently going back-
"wards and forwards in the building—Stewart had the Ad-
"dress in his pocket, or by his hat on the wall; he had it
"at one time in his pocket; that he saw the Address on
"the Sunday; that the spinners were all collected on the
"Monday morning at the entry door; that there might be
"four or five absent, but he does not know that any of
"them were; that a number of them came in; that he was
"quite vexed in seeing his old friends there; that Archi-
"bald M'Lean came in front of a number of them to him
"at his desk in the warehouse; that he either said they
"were wanting, or wished to have their wages; that they
"had received their wages on the Saturday eight days be-
"fore; that it was usual to pay them their wages monthly.
"He asked M'Lean why he asked for his wages; and, to
"the best of his recollection, M'Lean replied, that they
"were going to get their rights—they would not return
"without them." That was after the Proclamation, and, therefore, it is perfectly obvious what his purpose was; that there was an apparent disapprobation of what he said, operating amongst the rest that were behind him—M'Lean said this. "That one or two spoke; but as he was answer-

" ing what M'Lean said, he did not attend to those that " were behind him. Two of them spoke, and said, they " were afraid, in consequence of the Address, to work; they " were afraid both for their master's property and their " own safety." Therefore, their reason for not working, and wanting their wages was, that they were afraid of their master's work, and their own safety; and, therefore, I suppose they wanted their wages, thinking their master might not choose to take them back again, and, therefore, they asked for their wages. And these seemed to be the sentiments of more of them than those who adhered to M'Lean—this apparent disapprobation seemed to be the sentiments of the majority, if not of all of them; that he shortened the business with these men, and said, " I suppose you have said " all you have to say to me?" They replied that they had, and he said, " Go away then."—" That he remembers " William M'Phie was at his hand, and began to say some- " thing about reform, and that the answer he gave to him " was, that it was what he did not like himself; that he turned " round to him, and said, that he knew all about that; he " had been a reformer these twenty years, and signed de- " clarations; in short, he wanted to get quit of them. Those " who were behind M'Lean went from his desk, as if they " had been going to work. Some of them went to their " place, but they did not begin to work; that none of the " four he has mentioned have been to work since, and " very few of the others went to work for several days; that " they had about three hundred and twenty persons, in all, " about the mill; that they all stopped work, he thinks, on " the Monday morning, and did not begin again that week. " He recollects before the wages were given them, one or " two men came to him at different times, three or four " times a-day; that when they asked for wages, he always " told them, that he could not pay them till he heard from " Mr Dunn. William M'Phie came to him once, accom- " panied, he thinks, by Robert Munroe, and he turned " round to M'Phie, and said, 'No, my good lad, you are " well; yet take care, when you are going to look after your " rights, that you do not invade the rights of others.'" That

M'Phie had said nothing which induced him to say this, but it was in consequence of the expression which had been used by M'Lean on Monday morning—Munroe or M'Phie answered, "he detested the idea of injuring the rights of others." Now, Gentlemen, this certainly comes very near to Robert Munroe, because he swears "that M'Phie and Robert Mun-"roe came to him together; that he rather thinks Robert "Munroe was of the party, but he cannot be positive." The witness said, "Take care, that when you are going to look "after your rights, you do not invade the rights of others." Now, what was M'Phie's answer? "He detested the idea of "invading any man's rights, or injuring any man; but he did "not deny that he was going to vindicate his own rights;" and if this man had been positive that Munroe had been present, he must have been considered as acquiescing in the answer of M'Phie, if he made no answer for himself. They came together for a common purpose; and when people come together for a common purpose, all must be answerable for the spokesman, unless they disavow him, just as those people did, who disavowed M'Lean. But, then, Gentlemen, fortunately for the prisoner, this man is not positive that he was there—he thinks he was there, but he cannot be positive; and, therefore, that being the case, I apprehend it is your duty to presume, in favour of the prisoner, that he was not there, and that this man is mistaken; "that he had two "men of the name of Lindsay; that he thinks Alexander "Lindsay was one of them that came with M'Lean; that "he was vexed with them for going away on the Monday "morning, and he went to the door, and spoke to them "about their going away, and said they were wrong in going "away; and Lindsay said, 'By twelve o'clock, or some hour "of the day, the business would be all over at Glasgow, and "the houses opposite the barracks were all gutted, and "trenches thrown up in the barrack-yard;' that he (the "witness) answered, 'Then there is no use in your going;' "and Lindsay replied, 'that they were expected.'" Now, that certainly goes a great way against Lindsay, if he were upon his trial, and would go a great way against all persons who heard what he said, and did not disavow it; but then you see a great number of people disavow the intention

stated by M'Lean; and, therefore, even though Lindsay said this, as the great bulk of the people who accompanied M'Lean and Lindsay, on that occasion, expressed disapprobation of what M'Lean said, so you must be bound to believe they felt, and expressed the same disapprobation of what Lindsay said. "More passed, but he does not "recollect it; that it was after this M'Phie and Munroe came for their wages; he recollects M'Lean coming "once alone, and once in company with others; that he "does not recollect any thing that took place at any other "time, that any of the spinners came to him inquiring concerning their wages. He cannot say whether M'Phie "and the other came on their own account, or as a deputation or messengers from the other people; that it was "common so to come, that is, when they wanted any thing "from the manufactory; some of them said, the grocer "would not trust them, and they were afraid they might be "taken away, but they did not say by whom; he made but "little inquiry; he got to the books to settle their wages, "and had no time to talk with them; he had orders from "Mr Dunn to do so, and he paid their wages on Thursday "afternoon. That he saw an Address on Sunday morning; "he got on a cask to read it, when M'Phie passed to go to "church, and he went to church with him; they conversed "together the whole way, and the witness said to M'Phie, "that if they went out on that Address, he begged them to "have prudent men over them, or leaders to prevent their "getting into mischief;" he did not persuade them against going out, this old reformer; but only take care, if you do go, put yourselves under prudent men, or leaders, to prevent their getting you into mischief. There is that suspicious caution again, that comes out in the national character so much; a good and a loyal man (and this man, I think, took to himself the merit of being a good man in some respects) would have dissuaded them from going at all under any leaders; imprudent they must have been, bad they must have been. But it does not appear that Munroe is included in it at all. Then he says, "that he thought they "were going out, because the whole of the operatives were "to cease work from what that Address said. M'Phie said

M'Phie had said nothing which induced [illegible] was
it was in consequence of the expression [illegible] that
by M'Lean on Monday morning—[illegible] efore.
swered, "he detested the idea of in[illegible] to him
Now, Gentlemen, this certainly [illegible] e read
Munroe, because he swears "[illegible] it was
"roe came to him together [illegible] nd Ire-
"Munroe was of the party [illegible] ect any
witness said, "Take ca[illegible] ention to it;
"after your rights, y[illegible] n it was signed."
Now, what was M'P[illegible] ner, he says, "The
"invading any ma[illegible] mployed at the mill; he
"not deny that h[illegible] kman, and his general cha-
and if this man h[illegible] took him to be a little credulous
sent, he must [illegible] able of managing himself as many
swer of M'P[illegible] his moral character, he thinks he is a
[illegible]an."

came toget[illegible] nave Alexander Dunn, who resides at Dun-
together [illegible] has charge of his brother's cotton-works there.
the spok[illegible] "That he was there in the beginning of April;
did, w[illegible] on Monday the 3d of April, he saw a paper posted
tuna[illegible] at the end of James Bryson's house, in Failey; it was
wa[illegible] Address to the inhabitants of Great Britain and Ire-
[illegible]land; that he saw none at Duntochar; that he read that
[illegible] paper, for the first time, on the Tuesday; that M'Phie,
[illegible] who belonged to the works, called upon him about nine
"o'clock on Monday morning, to inquire if he would pay
"his and the Duntochar people's wages, telling him that
"on account of their not working, they had no credit at the
"shop, and wanted their wages; that he told him he did
"not know whether they would get their wages or not.
"Saturday is the pay-day once in four weeks; he thinks
"they were paid a fortnight before; M'Phie did not assign
"any other reason why he wished his wages; he said, the
"reason why they had struck work was, that they were
"afraid to work on account of the printed Address that had
"been put up." To which the witness replied, "That he did
"not think there was any reason for their leaving work for
"that; that M'Phie then asked him if he had seen the Ad-
"dress, and upon his saying he had not read it, M'Phie

out of his pocket; that he read that Address, which he has now, and which he produces. o persons with M'Phie; one of them was does not remember the other." There- n this occasion, good, bad, or indif- Robert Munroe. "That they have n-spinners; that they had been and worked until Satur- ay he observed a bustle in d out what it was at the time; ond if he observed it; that he went t half past six on the Monday morning; e got there the work people had got into the t had not begun to work; they were standing idle; t Robert Munroe and all the men at the bar were workmen there, except M'Devitt; that he saw William "M'Phie and William Blair in the mill that morning, but "does not recollect seeing the prisoner; that he had com- "munication with M'Lean and Lindsay; they told him they "were afraid to work; that they were afraid of their own "lives, and of the work being destroyed, if they continued "at their work; that they intended to strike work on ac- "count of so many going about recommending them to "strike work, and that there was no person working in the "country, but the witness was not on the road to see any "idle people. He told them he saw no reason for their "leaving work, and no danger of the work being destroyed, "so long as they continued at work." Now, Gentlemen, certainly in so far as this man's property was concerned, and they might have allowed him to be the best judge of the danger, if he chose to run the danger of having his mill destroyed, by his workmen continuing, it was their duty to do so; they were his servants, and it was their duty to continue to serve him; they were paid monthly, and they ought not to have stopped till their engagement was out; and they had no right to stop on the ground of his property being in danger, when he told them there was no danger; and there was no real danger, for none of these strangers did anything; on the contrary, it is sworn, they conducted themselves peaceably. But then, Gentlemen, this was only a conversation

with M'Lean and Lindsay, and does not implicate the prisoner. Then the witness says, "That he left that part of "the works, and returned to the mill about eleven o'clock;" then he corrects himself, and says, "that he went from Dun-"tochar to Faifley mill, and it was at the Faifley mill he "had the communication with M'Phie and Dunn; that "Richard Thompson is one of the spinners at the Faifley "mill; he points him out as one of the prisoners at the bar; "he had no communication with Thompson at the Faifley "mill; but when he had returned to Duntochar at eleven "o'clock, Thompson and two others came down to call upon "him, stating that they understood the Duntochar people "were to get their wages, and to know if they were to get "theirs; that both the mills belong to his brother; that they "assigned the same reason for not working as the Duntochar "people; he had not told the Duntochar people that they "were to get their wages; that he could not tell till he got "letters from Glasgow; that he had no other communica-"tion with the Duntochar people on that day, or Tuesday; "his brother came down on Tuesday, and he was along with "his brother when two of the spinners, the prisoner and "James Dunn, had a conversation with them near the Dun-"tochar mill; that they came enquiring about their wages; "while his brother was there, he says they said they came "as a deputation;" the brother says they did not—both may be right; one might have heard it, and the other not, but still it is not proved; "his brother told them to go and con-"sult if they were of the same mind as formerly; they sta-"ted that they wanted their wages, in consequence of not "getting credit; that they were afraid to work; they were "afraid of people coming from some distance, and destroy-"ing the works, where they found people at work; they sta-"ted that they asked for their wages, in consequence of not "knowing how soon they might be taken away, or called "away—called away, he thinks, was the word; that he told "them they were certainly wrong to leave their work; the "brother said there was danger in what they were doing; "he does not know the meaning of their reply; but the sub-"stance was, that they were afraid to work; that the result

"of the application was, that they were paid on Thursday, "about mid-day; that he had no communication with the "workmen on the Wednesday or Thursday before they "were paid; that they were idle during that time, and he "took no further charge of them; he read the Address on "Bryson's house, and the one M'Phie gave him, and he "thinks they were the same in substance." Therefore, the only thing here that applies to the prisoner is, that they had this conversation, in which he thinks they acted as a deputation; but in that he is not confirmed by his brother; if you think it is more criminal that they came as a deputation, you will consider that they came on their own account; and if it is more criminal that they should come on their own account, you will presume they came as a deputation, because neither is proved. One of them used an equivocal expression—"they did not know how soon they should be taken away, "or called away;" but it is but an equivocal expression, and you will apply to it that which you think the proper meaning.

On his cross-examination he says, "That the shopkeep-"ers told him that they had refused credit to the work-"men; that M'Phie shewed him the paper, to justify the "fear of himself and the other workmen, to continue their "work; that the paper had the appearance of having been "posted up, and taken down; that the paper has been in "his possession ever since M'Phie gave it to him; that he "has known the prisoner nine years; he was a very atten-"tive, quiet man, so far as he has seen; that the prisoner's "father was supported by the prisoner and his brother "George; that the prisoner is a married man, and during "the witness's acquaintance with him, has conducted him-"self in an orderly, quiet, and industrious manner."

Then comes William Dunn. "He lives in Glasgow, and "is the proprietor of some cotton-works at Duntochar; in "the beginning of April last he received a communication "about the state of those works; it was on the Monday; "and on the Tuesday he went down; he got to Duntochar "about twelve o'clock, and found that the works were stop-

"ped at both mills,—the Duntochar and the Faifley mills; "on going into the Duntochar works, he found two or "three of the spinners coming out from the works; he was "alone at that time; Robert Munroe was one of them; he "does not recollect the name of any other; he spoke to "them about having quitted their work, and recommend-"ed to them to return to their work; they said they were "afraid. They had been paid about two weeks before; he "asked them if they still wanted their wages; they said "they had a meeting the night before, and that they all "wanted their wages, because the grocers and shops would "not give them credit while they were out of work; that "he advised them to go and speak to the rest, to see if they "would not change their opinion; that Robert Munroe "and the other went away, and returned again in fifteen "minutes; that his brother was with him a short time "while he was with Munroe, and on their return, they said "they still wanted their wages,"—and that pretty nearly reconciles the evidence of the two brothers,—"that the first "time they were coming out of the works, *and then* they "were sent to the other workmen, and then they came as "a deputation;" therefore both of the brothers may be correct. They said, "they did not know how soon they might "be sent for to join the rest; that they expected informa-"tion from Glasgow." Now, this is an expression a great deal stronger than what was used by the brother; the brother says the expression was, "that they did not know how "soon they should be taken away, or called away." This man says, "that it was that they did not know how soon "they might *be sent for to join the rest;* that they expect-"ed information from Glasgow. He told them there was "danger in what they were doing; he told them that, from "what was doing at Glasgow; he does not think he told "them in what the danger consisted; he does not remem-"ber what reply they made; Munroe and Dunn left him "after this conversation." Now, certainly, Gentlemen, this is a very equivocal expression which was used, and he applies it to both of them, I see; he does not say which spoke; he applies it to both, and they were then acting as

a deputation. "That they did not know how soon they "might be sent for to join the rest; that they expected in-"formation from Glasgow," under circumstances, as you know, of a treasonable Proclamation being out, calling on people to strike work, and to rise in arms; and these people say they want their wages, because they do not know how soon they might be sent for to join the rest in Glasgow; I am sorry to say, evidently implying that they were to go, if they were sent for; otherwise there was no reason for their wanting their wages, because they would have been safe in the hands of Mr Dunn. But, say they, "we want "our wages, because we do not know how soon we may be "called for to join the rest—we expect information from "Glasgow;" and therefore, if you take this as the expression used, it will be very strong against Munroe; it would imply he intended to join the rest, if he was sent for; and that would go a great way, because it would give a colour to his being at the forge, and all the other things; but fortunately for the prisoner, there is a doubt about the words used, because the other Dunn says it was, "We do not "know how soon we are to be carried away;" which rather implies that they were to be swept away by the force and the current of the numerous people that were up all around; and therefore, as there is a doubt as to the exact expression that was used, and as the colour to be given to it depends on the expression; and as the repetition of words after three months renders it uncertain what the words were, we must remain in doubt whether it was, "That they did "not know how soon they might be carried away, or sent "for;" and that being the case, I apprehend it is your duty to take that expression which is most favourable to the prisoner; "That he returned to Glasgow that day, and came back "on Thursday; that Glasgow was quiet on the preceding "Saturday, the 1st of April; that he has a large iron-work "in Glasgow, and another in the Calton of Glasgow; that "he saw some papers posted up on Sunday, but did not "read them. On the Monday the men in his Glasgow works "struck work; a great many of the lower orders were go-"ing about the streets, and there was a great hinderance

"to business; he was at his own works, and saw very lit-
"tle of Glasgow on Tuesday; in the latter part of Wednes-
"day there were great crowds going along the streets, and
"a great number of shops were shut by four o'clock." That is a real fact, which speaks for itself, as to the apprehension of the people of Glasgow, that some danger was going on, on account of the number of people there; but you have nothing more than a general appearance in Glasgow, and that something was going on in Glasgow, to which this man says the rest were to be called on to join.

Then comes James Slimmond, the spinning-master at Glenhead, which is part of Duntochar, and is called the Duntochar mill, belonging to Mr William Dunn. "He
"recollects on Saturday the 1st of April, seeing the cotton-
"spinners running backwards and forwards, from one flat
"to another; that John Stewart, one of the spinners, shew-
"ed him a paper; that it purported to be a Proclamation
"from a Provisional Government, addressed to the Inha-
"bitants of Great Britain and Ireland; that it was a print-
"ed paper; that when he shewed it him, it was near eight
"o'clock in the evening; therefore there is no doubt about
"what this paper was; that it was between seven and eight;
"that he had challenged Stewart respecting the running
"that he saw about the mill; that he denied at first that
"he knew anything about it, and after pressing him re-
"specting it, he shewed it him, and said that that would
"explain it, if he would not tell the master." Therefore it is perfectly plain, that the running about the mill was connected with that paper; because John Stewart expressly swears, that that paper would explain what the running about the mill was occasioned by, and therefore there cannot be the least doubt that the import of that paper was known on Saturday night; but that does not signify; because, whether it was known on Saturday, Sunday, or Monday, is of no consequence, or whether the work was struck on Monday in consequence of it, unless it was shewn that Munroe saw it on Saturday. "That this would explain it, if he would not tell his master."—The witness wished him to burn it, because he thought it was a thing of a

mischievous tendency. He was not for doing it for some time, and at last promised that he would do it; but he cannot justly say if he did so. "That he said a man had called "on him at the dinner hour, and gave it him, but he did not know him." A paper was handed to the witness, and he said it was a paper similar to that.

Upon his cross-examination he says, "That upon the "Monday following that Saturday, he saw a number of "strangers about; that he was but little out of the mill, but "when he was out, he saw a good deal of strangers walking "about; he thinks he was in the counting-house when the "people demanded their wages; he was present about the "mill-door, and pushing them in to work; he does not re-"collect hearing them demand their wages—this was about "six o'clock; Mr Wilson was there then; after he got "partly into the mill, he thinks they went into the count-"ing-house, and he went with them; there was a great deal "of conversation among them, relating to their wages; and "he thinks there was a demand made on Mr Wilson for "their wages; that the reason they gave was, that there "was a great deal of people would come, they thought, and "that some mischief might come upon the place; he en-"deavoured to persuade them to go on with their work—"and a good many appeared to be saying that they thought "there could be no danger in going in to work; that "then he heard one call out, that if they went on with their "work that day, there would not be a head left on their "shoulders before the morrow night; that the man that call-"ed out so was named Neil M'Lean." Now, certainly, Gentlemen, that was extremely improper in Neil M'Lean; but whether he meant that as a threat, or merely an inference from the danger, does not appear—it would operate on the men who heard it; he might intend it as a personal threat from himself, or that the danger was such, that there will not be a head left upon the shoulders of any of you, if you work: The effect would be the same; but at all events this is a man of the name of Neil M'Lean, it was not the prisoner who uttered it; he was one of those to whom it was addressed, and on whom it may be supposed to have operated.

"That he has known the prisoner, Robert Munroe, be-
"tween ten and twelve years; that he knows his brother
"also; that, in point of moral character, he thinks them in-
"dustrious, and inoffensive persons."

The next witness is James Craig. "He lives in the slit-
"mill at Duntochar; that he is a blast-man in general, and
"works at the smith's shop there; that he remembers the
"Monday in April when the people stopped work there;
"that he was at work in the forenoon; that about eleven
"o'clock on that day, four or five men came into the shop
"and said they were wanting pikes made, but he does not
"know them; he did not make any pikes for them; he got
"them out, and continued his work, till he went to dinner;
"he returned to work considerably after dinner, between
"four and five; that he did not lock the shop when he went
"to dinner; that it was full of people when he came back;
"there might be from twenty to thirty, or thereabouts; that
"when he went to the door they turned him out, telling
"him they had no use for him; that he could not recollect
"any of them, or tell what they were doing; that when he
"went, the bellows were going; that they would not go of
"themselves; that he thinks Blair was there, but could not
"tell what he was doing; that they were moving back-
"wards and forwards, but he did not see them doing any
"thing; that he was not half a minute there before they
"turned him out, and he went away quietly then; that he
"was going away at any rate with some spades he had made;
"he could not say whether any of the persons who formed
"the multitude in the afternoon were part of the persons
"whom he saw there in the morning; the persons in the
"morning had a pike with them, like the one upon the ta-
"ble; he took it into his hands to look at it, and refused
"to make any; the shop where he was working was what
"they call the spade-finishing shop, not the forge."

Then there comes Thomas Edington, the proprietor of the forge at Duntochar. "He remembers sending a parcel
"of old files there, some in the middle of March, and some
"on the 1st of April; there might be about three hundred
"weight; that they have never come to his hands, and have

"been lost, as far as he is concerned; that he does not know "if any were sent to the Castle."

Then you have the exculpatory proof—the first witness is James Slimmond, junior. "He says he is a cotton-spin-"ner at Duntochar mill; that he was there in April last, "and remembers the time when the cotton-spinners there "gave up work; it was the first Monday in April; he does "not know the cause of their all having struck work; but "for himself he was intimidated at the report that was fly-"ing, that they were in danger; that the ground of his fear "was the contents of the paper that was put up, and that "he had no other motive for stopping work."

On examination for the Crown, he says, "He first saw this "paper on a wall—that he neither saw nor heard of it on "Saturday; that he gave up work on Monday, and went "to take a walk with James Paul—that they came down by "Kilpatrick, but went to no mill; that he was not at the "forge, nor his companion, to his knowledge; that he was "not with Paul all the day—that he left him to go home to "dinner, and after dinner joined him again; that they went "the same road in the afternoon, and after that he went "home and staid at home all the night till he went to bed; "that his father was in the mill; that he was nine days be-"fore he returned to his work; that he would have gone to "the mill that day, had it gone on;" so that his alarm had very soon subsided. "That no wages were due to him; "that during the nine days that he was absent from the "mill, he employed himself either in taking solitary walks, "or in company with others; that he went to Glasgow on "Saturday with his brother, Samuel Slimmond; he saw Ro-"bert Munroe on Thursday about eight o'clock, standing "at his own door." Now, surely this does not implicate Robert Munroe in the smallest degree, for he saw him at his own door about eight or nine o'clock on Thursday, and he saw him at no other place on Tuesday or Wednesday; and so far as this foolish and groundless alarm was the ground of their striking work, this man corroborates it—he says, "that was his motive." Then he says, "the men were all off "at Faifley and Glenhead on those days; that the paper-

"mills did not continue at work. He cannot tell what other "mills were off work. He first saw the address about half "past six on Sunday morning on John Reid's house; he "saw another at Bryson's when he went to church; he heard "somebody, whom he does not know, read that against "Reid's house, but he read it so low, that he scarcely heard "it—he heard that part about stopping work; he does not "recollect the words, but it wished all masters of public and "private works to shut up the one and close the other, for "that they would not sustain any damage if that was done; "he did not read that against Bryson's, but he knows it was "the same thing, because it had the same beginning—he "saw another in one of the flats of the mill; he saw John "Stewart take it out of his pocket upon the Monday morn-"ing; he cannot say whether Robert Munroe was there, "but he knows George Munroe was not. When Stewart "took it out of his pocket, he gave it to William M'Phie, "and M'Phie gave it to Mr Dunn; that he cannot say if "this was before they applied to Wilson."

On being re-examined, "he does not know at what time "the prisoner was apprehended. There were many people "round the paper when it was read, but he cannot name any "one—he had no conversation with any of them; there "were a crowd of strangers in the place, both on the day he "heard it read, and the next day, but they offered no vio-"lence to him, and he did not hear that they offered any "violence to any body else." Gentlemen, as I stated before, this alarm was a perfectly groundless one, if it existed; and if it is not an excuse made by them to palliate their having obeyed that proclamation, and done what it ordered them to do; and, most unquestionably, all that these witnesses say is liable to this suspicion, that it is an excuse for their own improper conduct—that it is to excuse themselves as well as others, that they say that they had this fear, which may be a most affected pretence; that there was no real ground is plain, for this man swears, that the strangers about the place offered no violence to him or any other human being; so that if there were strangers there, they were men who had struck like themselves, and were walking about the country.

Then Matthew Fleming says, "He is a cotton-spinner in "Mr Dunn's mill at Duntochar. He remembers the work-"men there striking work about the beginning of last April, "and that he struck work himself because the rest did."

George Anderson "is a cotton-spinner at Mr Dunn's, and "was in his employ at Duntochar mill in April last. He "remembers the people striking work there on a Monday; "he remembers John Stewart shewing a paper which he "took out of his pocket to shew Mr Dunn the danger of "working. He cannot tell that there was any danger; that "this was in the morning; does not recollect seeing the pri-"soner on that Monday; that he went home, and then "went and took a walk to West Kilpatrick, but does not "remember meeting any of his acquaintance there."

Then comes William Rankin. "He also is a cotton-spin-"ner at Mr Dunn's mill at Glenhead and Duntochar. He "remembers their striking work there—he thinks it was on "the 3d of April; that it was principally from fear—that "was his own reason for striking work. He saw the pri-"soner Robert Munnes in the mill that day, but does not "recollect seeing him after he had struck work."

On his cross-examination, he says, "That he returned to work on Thursday eight days, but most of them were at "work the day before he returned to work; that he saw Mr "Wilson in the mill on the Monday morning before he "struck work—that was at the time he saw the prisoner; "that he went into Mr Wilson's room with the other cot-"ton-spinners. He does not know whether the prisoner "went with them—he saw him in the lobby; that the fear "he referred to was a general rumour through the place, "that a band of idle and disorderly men were going about, "and that they had threatened to destroy Mr Dunn's pro-"perty and the workmen there—that was what operated on "his mind; that the place was filled with strangers on the "Monday, but they conducted themselves peaceably." So that these strangers at least who came in contact with them could not be that band of disorderly people; nor is there any evidence that any band of idle and disorderly people did

come near Duntochar. Therefore it was an idle and groundless fear.

Then comes Nicol Fergusson, who is also a workman at Mr Dunn's mill at Duntochar. "He remembers their striking work there on Monday the 3d of April last, and he "struck work with the rest; it was the Address that he saw "upon Mr Reid's house that operated upon his mind, and "induced him to leave work; the Address threatened that "it would be dangerous for them to work, and that induced "him to leave work."

Upon his cross-examination, he says, "He saw the Address on Reid's on Sunday morning about nine o'clock; "he saw no other Address there that day; he thinks on the "next day he saw one in the mill in one of the spinner's "hands; he went to the mill on Monday morning, but did "not work; nothing particular occurred on the Sunday but "the people about the place looking at the Address; that "the town was otherwise all quiet."

James Bryson says, "That he is a grocer in Faifley, and "supplies the work people about there with the articles that "they require. He remembers the people giving over work "at the mill—he thinks it was either the first or second of "April; he was in the habit of giving them credit for the "things that they took; he knows that they were paid "monthly; at the time they stopped work he refused credit "in a general measure." I suppose, he means by that, in a great measure at the time of the stopping.

On cross-examination, he says, "That Faifley is about a "quarter of a mile from Glenhead. He thinks the striking "work began on a Monday, and he adopted the resolution "not to give credit on that day; that he generally opens "shop at seven o'clock; he does not recollect any applications for credit on Monday morning before eight o'clock; "but the general understanding on the Sabbath day was, "that they were to stop on the Monday; he did not open "his shop on the Monday morning, and it remained shut "for three days."

Then comes William Buchanan. He says, "He is clerk in "Duntochar mill, and remembers the stopping of work

"there; he knows the prisoner at the bar, Robert Munroe, "and his brother; he saw them on the Monday that the "work was stopped, and had some little conversation with "Robert upon the subject of his stopping work; that he "was wishing him to come in to his work again; Munroe said, "that he was threatened if he did—this was about twelve "o'clock."

Now, Gentlemen, I have gone through the whole of the evidence to you, and I have made such observations as humbly occur to me on the subject, and the result of the whole is this:—I apprehend you cannot have the smallest doubt on the law; or that a great deal of Treason was committed in the forge on that day; but the doubt will be, whether that is brought home to the prisoner; and I think, from the observations I have made, you will consider that the evidence is in my mind very doubtful, and therefore you will form your opinion upon it.

You will understand, that by the law of England now established, you must be all agreed in your verdict; and it must not be reduced, as it may be in our practice, to writing, but given *viva voce* by the foreman—he may jot it down for his own guidance. If you are agreed in your verdict, you will return it immediately; if you wish to retire, you will say so.

The Jury withdrew at six o'clock, and returned into Court in twenty-five minutes, finding the prisoner Not Guilty.

Lord President.—Robert Munroe, you have heard the verdict of the Jury, that you are not guilty of the High Treason with which you were charged. I hope and trust, that the danger you have run, and the escape which you have made, will have a salutary effect upon your future life and conduct, and, above all, that the attention which has been paid to your case, the ability with which it was defended, you a poor, helpless, friendless, obscure individual; the impartiality with which your case was heard, and the justice and favour which you have met with, will convince you that the poor of this country have in reality no rights

in want of vindication; that it will make you satisfied with that glorious Constitution, as already by law established, which protects alike the great and the small, the rich and the poor; for you must be conscious, that the first gentleman of this county around you, or the highest peer of the realm, (if he could have been tried by a Jury of Commoners) could not have met with greater justice and impartiality, or with a fairer trial, or a more happy result, than it has been your good fortune to meet with. Take all these things to heart. It has been proved, and I believe it to be so, that hitherto you were an honest and industrious man, an affectionate son, and a peaceable subject. Go home to the bosom of your family, and believe that you discharge best your duty to your God, and your duty to your country, by living peacably in that state of life in which it has pleased Providence to place you. You may not be so fortunate in point of riches as others; but that is the dispensation of Providence: all cannot be rich, all cannot be poor. We are bound each of us to discharge our duty in that station in which it has pleased God to place us. Some of us may be rich, but we are not idle. You see the important duty we on the Bench have to perform; God knows it is not a life of idleness. Every man has a duty to perform, and he is bound to submit to the ways of Providence, whatever station he is placed in. You are now discharged, and I trust you never will give the least occasion for the laws of your country laying hold of you again.

Robert Munroe then left the Court.

Lord Advocate.—My Lord President, I am under great doubts as to the line of conduct which, consistently with my public duty, I ought now to pursue. When your Lordship finished your charge to the Jury so decidedly favourable to the prisoner now discharged, I had made up my mind to consent to an acquittal of the other prisoners at the bar. It must have been obvious that I had no proof to offer against them which had not been adduced against their companion, and as they were charged with all the self-same acts, I could

not expect, by a repetition of that evidence, to alter the opinion of the Court or of the Jury. Convinced, however, as I was in my own mind, that the case of the Crown had been completely made out, and this conviction being confirmed by the difficulty which the Jury, from the length of time they have been inclosed, have obviously felt in making up their minds, I am uncertain how far I am now justified in adhering to that line of conduct. Knowing, however, the feelings of that mild Government, whose servant I am, and persuaded, that if I should err, it is better that error should be on the side of moderation than of severity, I am disposed to incur the responsibility, and a deep and weighty responsibility I feel it, now to consent to, I fear, an unmerited acquittal of these individuals.

Lord President.—My Lord Advocate, you have conducted yourself throughout with so much propriety, that both the Government and the country (whose servant you are in one sense) will, I am persuaded, be satisfied with the decision you have formed on the subject. I think you have, on the present occasion, acted with prudence and discretion.

The Jury were then sworn in the case of Patrick M'Devitt, William Blair, George Munroe, Richard Thomson, and William M'Phie, and no evidence being offered against them, they were immediately pronounced *Not Guilty.*

Lord President.—Prisoners at the bar, you heard what I said to your companion Robert Munroe; I have nothing farther to say to you, but I hope you will attend to that, and that it will have a good effect upon you for the rest of your lives.

The prisoners were then discharged, and the Court was adjourned.

END OF VOLUME SECOND.

EDINBURGH:
Printed by James Ballantyne & Co.

B

3 6105 063 157 189